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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28843 Directorate Identifier 2007–CE–065–AD; Amendment 39–15317; AD 2007–26–15]

RIN 2120–AA64

Airworthiness Directives; DG Flugzeugbau GmbH Model DG–500MB Gliders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 2007–26–15, which was published in the **Federal Register** on January 3, 2008 (73 FR 400), and applies to all DG Flugzeugbau GmbH Model DG–500MB gliders. AD 2007–26–15 requires that you modify the affected parts and exchange pages in the flight, maintenance, and repair manuals. The FAA incorrectly referenced the AD number as ''2007–26–25'' instead of ''2007–26–15.'' Current language in § 39.13 [Amended] of AD 2007–26–15 references ''AD 2007–26–25'' instead of ''2007–26–15.'' This document corrects that paragraph by replacing the reference of ''2007–26–25'' with ''2007–26–15.''

DATES: The effective date of this AD (2007–26–15) remains February 7, 2008.

FOR FURTHER INFORMATION CONTACT: Greg Davison, Glider Program Manager, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; fax: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

On December 20, 2007, the FAA issued AD 2007–26–15, Amendment 39–15317 (73 FR 400, January 3, 2008), which applies to all DG Flugzeugbau GmbH Model DG–500MB gliders. AD 2007–26–15 requires you to modify the affected parts and exchange pages in the flight, maintenance, and repair manuals. Current language in § 39.13 [Amended] of AD 2007–26–15 references ''2007–26–25'' instead of ''2007–26–15.''

Need for the Correction

This correction is needed to specify the correct AD number of AD 2007–26–15.

Correction of Publication

■ Accordingly, the publication of January 3, 2008 (73 FR 400), of Amendment 39–15317; AD 2007–26–15, which was the subject of FR Doc. E7–25212, is corrected as follows:

■ On page 400, in the second column, in the third line under the heading 14 CFR Part 39, replace ''2007–26–25'' with ''2007–26–15.''

§ 39.13 [Corrected]

■ On page 401 in the second column, in the third line under the heading § 39.13 [Amended], replace ''2007–26–25'' with ''2007–26–15.''

■ Action is taken herein to correct this reference in AD 2007–26–15 and to add this AD correction to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

■ The effective date remains February 7, 2008.

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

John Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–830 Filed 1–23–08; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–29317; Directorate Identifier 2007–CE–079–AD; Amendment 39–15348; AD 2008–02–18]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company 172 and 182 Series Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Cessna Aircraft Company 172 series airplanes with the BRS–172 Parachute System installed via Supplemental Type Certificate (STC) No. SA01679CH and Cessna Aircraft Company 182 series airplanes that are equipped with the BRS–182 Parachute System installed via STC No. SA01999CH. This AD requires you to replace the pick-up collar support and nylon screws for the BRS–172 and BRS–182 Parachute System. This AD results from notification by Ballistic Recovery Systems, Inc. (BRS) that the pick-up collar assembly may prematurely move off the launch tube and adversely affect rocket trajectory during deployment. We are issuing this AD to prevent premature separation of the collar, which could result in the parachute failing to successfully deploy.

DATES: This AD becomes effective on February 28, 2008.

On February 28, 2008, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

ADDRESSES: For service information identified in this AD, contact Ballistic Recovery Systems, Inc., 300 Airport Road, South Saint Paul, MN 55075–3551; telephone: (651) 457–7491; fax: (651) 457–8651.

To view the AD docket, go to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, or on the Internet at *http://www.regulations.gov*. The docket number is FAA–2007–29317; Directorate Identifier 2007–CE–079–AD.

FOR FURTHER INFORMATION CONTACT: Gregory Michalik, Senior Aerospace Engineer, 2300 East Devon Avenue, Room 107, Des Plaines, Illinois 60018; telephone: (847) 294–7135; fax: (847) 294–7834.

SUPPLEMENTARY INFORMATION:

Discussion

On November 2, 2007, we issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Cessna Aircraft Company 172 and 182 series airplanes that are equipped with the BRS–172 and BRS–182 Parachute System. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on November 2, 2007 (72 FR 62143). The NPRM proposed to require the replacement of the pick-up collar support and screws for the BRS–172 and BRS–182 Parachute System.

Comments

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

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial corrections. We have determined that these minor corrections:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Costs of Compliance

We estimate that this AD affects 54 airplanes in the U.S. registry.

We estimate the following costs to do the modification:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 work-hour × $80 per hour = $80	Not Applicable	$80	$4,320

Note: BRS will provide warranty credit to the extent noted in Ballistic Recovery Systems, Inc. Service Bulletins SB 07–01 and SB 07–02, both dated June 8, 2007.

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 AD.

Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD (and other information as included in the Regulatory Evaluation) and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include ''Docket No. FAA–2007–29317; Directorate Identifier 2007–CE–079–AD'' in your request.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2008–02–18 Cessna Aircraft Company: Amendment 39–15348; Docket No. FAA–2007–29317; Directorate Identifier 2007–CE–079–AD.

Effective Date

(a) This AD becomes effective on February 28, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the following airplane models, all serial numbers, certificated in any category, that are equipped with:

(1) BRS–172 Parachute System installed via Supplemental Type Certificate (STC) No. SA01679CH, or

(2) BRS–182 Parachute System installed via STC No. SA01999CH.

Cessna 172 models	Cessna 182 models
172	182G
172A	182H
172B	182J
172C	182K
172D	182L
172E	182M
172F (USAF T–41A)	182N
172G	182P
172H (USAF T–41A)	182Q
172I	182R
172K	182S
172L	182T
172M	T182
172N	T182T
172P	
172Q	
172R	
172S	
R172J	
R172K	

Unsafe Condition

(d) This AD results from notification by Ballistic Recovery Systems, Inc. (BRS) that the pick-up collar assembly may prematurely move off the launch tube and adversely affect rocket trajectory during deployment. We are issuing this AD to prevent premature separation of the collar. This condition could

result in the parachute failing to successfully deploy.

Compliance

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

Actions	Compliance	Procedures
Remove and replace the pick-up collar support and two retaining screws.	Within the next 25 hours time-in-service after February 28, 2008 (the effective date of this AD).	(i) For Cessna 172 series airplanes follow BRS SB 07–01, dated June 8, 2007. (ii) For Cessna 182 series airplanes, follow BRS SB 07–02, dated June 8, 2007.

Alternative Methods of Compliance (AMOCs)

(f) The Manager, Chicago Aircraft Certification 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: Gregory Michalik, Senior Aerospace Engineer, FAA, 2300 East Devon Avenue, Des Plaines, Illinois, 60018; telephone: (847) 294–7135; fax: (847) 294–7834; e-mail: *gregory.michalik@faa.gov*. 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.

Material Incorporated by Reference

(g) You must use Ballistic Recovery Systems, Inc. Service Bulletin No. 07–01, dated June 8, 2007, for Cessna 172 series airplanes; or Ballistic Recovery Systems, Inc. Service Bulletin No. 07–02, dated June 8, 2007, for Cessna 182 series airplanes; to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Ballistic Recovery Systems, Inc., 300 Airport Road, South Saint Paul, MN 55075–3551; telephone: (651) 457–7491; fax: (651) 457–8651.

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

Issued in Kansas City, Missouri, on January 16, 2008.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–1130 Filed 1–23–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28884; Directorate Identifier 2007–NM–116–AD; Amendment 39–15343; AD 2008–02–13]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Boeing Model 727 airplanes. This AD requires repetitive external high frequency eddy current (HFEC) inspections of the crown skin for cracks at certain stringer attachment holes, and repair if necessary. This AD results from a report of cracks at multiple locations on certain areas of the crown skin. We are issuing this AD to detect and correct fatigue cracks of the crown skin, which could result in rapid decompression of the airplane.

DATES: This AD is effective February 28, 2008.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of February 28, 2008.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Berhane Alazar, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6577; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to all Boeing Model 727 airplanes. That NPRM was published in the **Federal Register** on August 8, 2007 (72 FR 44433). That NPRM proposed to require repetitive external high frequency eddy current (HFEC) inspections of the crown skin for cracks at certain stringer attachment holes, and repair if necessary.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comment received from the commenter.

Request to Delegate Approval of Alternative Methods of Compliance (AMOC) for Repairs

Boeing requests that paragraph (h) of the NPRM be revised to allow AMOCs for any required repair to be approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Seattle Aircraft Certification Office.

We agree with Boeing's request and have revised paragraph (h) of the AD accordingly.

Conclusion

We reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting the AD with the change described previously. We also determined that this change will not increase the economic burden

on any operator or increase the scope of the AD.

Costs of Compliance

There are about 842 airplanes of the affected design in the worldwide fleet. This AD affects about 459 airplanes of U.S. registry. The inspection takes about 110 work hours per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the AD for U.S. operators is $4,039,200, or $8,800 per airplane, per inspection cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

2008–02–13 Boeing: Amendment 39–15343. Docket No. FAA–2007–28884; Directorate Identifier 2007–NM–116–AD.

Effective Date

(a) This airworthiness directive (AD) is effective February 28, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Boeing Model 727, 727C, 727–100, 727–100C, 727–200, and 727–200F series airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from a report of cracks at multiple locations on certain areas of the crown skin. We are issuing this AD to detect and correct fatigue cracks of the crown skin, which could result in rapid decompression of the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Repetitive Inspections and Repair

(f) Before the accumulation of 66,000 total flight cycles, or within 3,500 flight cycles after the effective date of this AD, whichever occurs later, do an external high frequency eddy current inspection of the crown skin for cracks at stringer attachment holes between stringer 11 left and stringer 11 right and from body station (BS) 259.5 to BS 1183. Repair any crack found before further flight. Do the actions in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 727–53A0224, dated April 10, 2003, except as provided by paragraph (g) of this AD. Repeat the inspection at intervals not to exceed 3,500 flight cycles.

(g) Although Boeing Alert Service Bulletin 727–53A0224, dated April 10, 2003, specifies to submit certain information to the manufacturer, this AD does not include that requirement.

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

Material Incorporated by Reference

(i) You must use Boeing Alert Service Bulletin 727–53A0224, dated April 10, 2003, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

(3) You may review copies of the service information incorporated by reference at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

Issued in Renton, Washington, on January 14, 2008.

Stephen P. Boyd,

Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–1129 Filed 1–23–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0044; Directorate Identifier 2007–SW–40–AD; Amendment 39–15341; AD 2008–02–11]

RIN 2120-AA64

Airworthiness Directives; Eurocopter France Model SA332C, L, L1, and L2 Helicopters

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

ACTION: Final rule; request for comments.

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

This Airworthiness Directive (AD) is issued following the failure of an attachment bolt securing the main rotor RH servo-control to the non-rotating swash-plate.

Failure of the servo-control/swash-plate attachment in flight leads to a catastrophic situation.

This AD requires actions that are intended to address this same unsafe condition.

DATES: This AD becomes effective February 8, 2008.

The Director of the Federal Register approved the incorporation by reference of Eurocoper Alert Service Bulletin No. 67.00.36, dated October 9, 2006, as of February 8, 2008.

We must receive comments on this AD by March 24, 2008.

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

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Uday Garadi, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Guidance Group, Fort Worth, Texas 76193–0110, telephone (817) 222–5123, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Streamlined Issuance of AD

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

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

Discussion

The European Aviation Safety Agency (EASA), which is the technical agent for the Member States of the European Community, has issued Airworthiness Directive No. 2006–0306–E, dated October 10, 2006, to correct an unsafe condition for the French-certificated products. The MCAI states:

This Airworthiness Directive (AD) is issued following the failure of an attachment bolt securing the main rotor RH servo-control to the non-rotating swash-plate.

Failure of the servo-control/swash-plate attachment in flight leads to a catastrophic situation.

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

Relevant Service Information

ECF has issued Alert Service Bulletin No. 67.00.36, dated October 9, 2006. The actions described in the MCAI are intended to correct the same unsafe condition as that identified in the service information.

FAA's Determination and Requirements of This AD

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

Differences Between the AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. However, our AD differs from the MCAI and service information as follows: We have changed the word ''check'' to ''inspect'' to more clearly indicate that we are requiring the work to be performed by a certificated mechanic. Also, this AD does not require that the operator send the information to the manufacturer as specified in the ASB. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information. These differences are highlighted in the ''Differences Between the FAA AD and the MCAI'' section within the AD.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because the EASA AD was issued following the failure of an attachment bolt securing the main rotor right-hand servo-control or swash plate attachment in flight, which can lead to a complete loss of control of the helicopter. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0044; Directorate Identifier 2007-SW–40–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Costs of Compliance

We estimate that this AD will affect 4 helicopters of U.S. registry and will take about 3 work hours to inspect the bolts. The average labor rate is $80 per work-hour. Required parts will cost about $600 for three bolts per helicopter. Based on these figures, we estimate the total cost to be $3,360.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2008–02–11 Eurocopter France: Amendment 39–15341. Docket No. FAA–2008–0044; Directorate Identifier 2007–SW–40–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective February 8, 2008.

Other Affected ADs

(b) None.

Applicability

(c) This AD applies to Model AS332C, L, L1, and L2 helicopters, certificated in any category.

Reason

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

This Airworthiness Directive (AD) is issued following the failure of an attachment bolt securing the main rotor RH servo-control to the non-rotating swash-plate.

Failure of the servo-control/swash-plate attachment in flight leads to a catastrophic situation.

Actions and Compliance

(e) Within 15 hours time-in-service (TIS), unless already done, do the following actions:

(1) For each swashplate attachment bolt, part number 332A31–1340–21, having 500 or more hours time-in-service, inspect for tightening torque, wear, and a crack in each of these three bolts that attach the main servo controls to the nonrotating swashplate. Do this inspection by following the Accomplishment Instructions, paragraph 2.B. and Figure 1, of Eurocopter Alert Service Bulletin No. 67.00.36, dated October 9, 2006 (ASB).

(2) If there is a crack in a bolt or if the differential wear on a bolt between areas F, G, and H (as depicted in Figure 1 of the ASB) is more than 0.005 millimeter, replace the bolt with an airworthy bolt before further flight.

Differences Between the FAA AD and the MCAI

(f) We have changed the word ''check'' to ''inspect'' to more clearly indicate that we are requiring the work to be performed by a certificated mechanic. Also, this AD does not require that the operator send the information to the manufacturer as specified in the ASB.

Subject

(g) Air Transport Association of America (ATA) Code 6700 Rotor Flight Controls.

Other Information

(h) *The following provisions also apply to this AD:*

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Safety Management Group, 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: Uday Garadi, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Guidance Group, Fort Worth, Texas 76193–0110, telephone (817) 222–5123, fax (817) 222–5961.

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

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

Related Information

(i) MCAI European Aviation Safety Agency (EASA) Airworthiness Directive No. 2006–0306–E, dated October 10, 2006, contains related information.

(j) The Director of the Federal Register approved the incorporation by reference of this Eurocopter Alert Service Bulletin No. 67.00.36, dated October 9, 2006, under 5 U.S.C. 552(a) and 1 CFR part 51.

(k) For service information identified in this AD, contact American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527.

(l) You may review copies of Eurocopter Alert Service Bulletin No. 67.00.36, dated October 9, 2006, at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Fort Worth, Texas, on December 27, 2007.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. E8–1028 Filed 1–23–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–0053; Directorate Identifier 98–ANE–54–AD; Amendment 39–15347; AD 2008–02–17]

RIN 2120–AA64

Airworthiness Directives; General Electric Company CF6–50, –80A1/A3, and –80C2A Series Turbofan Engines

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) for General Electric Company (GE) CF6–50, –80A1/A3, and –80C2A series turbofan engines, installed on Airbus A300, A300–600, and A310 series airplanes. That AD currently requires initial and repetitive inspections and checks of the thrust reverser actuation systems. This AD requires revised inspection thresholds and intervals, and would require the same actions and additional inspections of the thrust reverser actuation system locking features. This AD results from refined safety analyses performed on the thrust reverser systems by GE and Airbus. We are issuing this AD to prevent inadvertent in-flight thrust reverser deployment, which can result in loss of control of the airplane.

DATES: This AD becomes effective February 28, 2008. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of February 28, 2008.

ADDRESSES: You can get the service information identified in this AD from Middle River Aircraft Systems, Mail Point 46, 103 Chesapeake Park Plaza, Baltimore, MD 21220, attn: Warranty Support, telephone: (410) 682–0094, fax: (410) 682–0100.

The Docket Operations office is located at Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: Robert Green, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *Robert.green@faa.gov*; telephone (781) 238–7754; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 by superseding AD 99–18–20, Amendment 39–11286 (64 FR 48286, September 3, 1999), with a proposed AD. The proposed AD applies to GE CF6–50, –80A1/A3, and –80C2A series turbofan engines, installed on Airbus A300, A300–600, and A310 series airplanes. We published the proposed AD in the **Federal Register** on October 25, 2007 (72 FR 60604). That action proposed to require revised inspection thresholds and intervals, and proposed to require the same actions as AD 99–18–20, and additional inspections of the thrust reverser actuation system locking features.

Examining the AD Docket

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

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received.

Service Bulletin Reference Error

One commenter, GE Aviation, points out that Alert Service Bulletin No. CF6–80C2 S/B 78A1015 should be No. CF6–80C2 S/B 78A1005, in paragraph (j)(2). We agree and corrected the number in the AD.

Airplane Reference Clarification

One commenter, Airbus, requests that we clarify paragraphs (i)(1), (i)(2), (j)(1), and (j)(2) by referencing that they apply to A300–600 series airplanes, instead of A300 and A310 series airplanes. We agree and made those changes to the AD.

NPRM Costs of Compliance Error

We inadvertently listed an incorrect estimated cost total of $28,000 in the NPRM ''Costs of Compliance'' paragraph. We corrected the estimated cost total to $16,480, in this AD.

Conclusion

We have carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

We estimate that this AD will affect 206 engines installed on airplanes of U.S. registry. We also estimate that it will take about one work-hour per engine to perform the additional inspection, and that the average labor rate is $80 per work-hour. Based on these figures, we estimate the total additional cost of the AD for one inspection of the U.S. fleet, to be $16,480.

Authority for This Rulemaking

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

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

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will

not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

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

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

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

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary at the address listed under **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–11286 (64 FR 48286, September 3, 1999), and by adding a new airworthiness directive, Amendment 39–15347, to read as follows:

2008–02–17 General Electric Company: Amendment 39–15347. Docket No. FAA–2007–0053; Directorate Identifier 98–ANE–54–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective February 28, 2008.

Affected ADs

(b) This AD supersedes AD 99–18–20, Amendment 39–11286.

Applicability

(c) This AD applies to General Electric Company (GE) CF6–50, –80A1/A3, and –80C2A series turbofan engines. These engines are installed on Airbus A300, A300–600, and A310 series airplanes.

Unsafe Condition

(d) This AD results from refined safety analyses performed on the thrust reverser systems by GE and Airbus. We are issuing this AD to prevent inadvertent in-flight thrust reverser deployment, which can result in loss of control of the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified unless the actions have already been done.

Initial Inspection for CF6–50 Series Turbofan Engines

(f) For CF6–50 series turbofan engines, perform initial thrust reverser inspections using Section 2, Accomplishment Instructions, of Middle River Aircraft Systems (MRAS) Alert Service Bulletin (ASB) No. CF6–50 S/B 78A3001, Revision 4, dated August 30, 2007, as follows:

(1) On Airbus A300 series airplanes with a Three Light Reverser Indication Circuit configuration, and without thrust reverser actuation system (TRAS) locks installed, perform the initial inspections and checks within 1,500 hours time-in-service (TIS) after the effective date of this AD.

(2) On Airbus A300 series airplanes with a Three Light Reverser Indication Circuit configuration, and with TRAS locks installed, perform the initial inspections and checks within 7,000 hours TIS after the effective date of this AD.

(3) On Airbus A300 series airplanes with a Two Light Reverser Indication Circuit configuration, and without TRAS locks installed, perform the initial inspections and checks within 1,500 hours TIS after the effective date of this AD.

(4) On Airbus A300 series airplanes with a Two Light Reverser Indication Circuit configuration, and with TRAS locks installed, perform the initial inspections and checks within 7,000 hours TIS after the effective date of this AD.

Repetitive Inspections for CF6–50 Series Turbofan Engines

(g) For CF6–50 series turbofan engines, perform repetitive thrust reverser inspections using Section 2, Accomplishment Instructions, of MRAS ASB No. CF6–50 S/B 78A3001, Revision 4, dated August 30, 2007, as follows:

(1) On Airbus A300 series airplanes with a Three Light Reverser Indication Circuit configuration, and without TRAS locks installed, perform repetitive inspections and checks at the following:

(i) Within every 2,500 hours time-since-last-inspection (TSLI), perform paragraph 2.D., Translating Cowl Air Seal, Dagmar Fairing and Aft Frame Inspection; and paragraph 2.I., Fan Reverser Operational Check.

(ii) Within every 6,000 hours TSLI, perform paragraph 2.C., Pneumatic Drive Motor (PDM) Disc Brake Holding Torque Check; paragraph 2.E., Feedback Rod to Yoke Alignment Check and Inspection of Feedback Yoke and Feedback Rod; paragraph 2.F., Translating Cowl Auto Re-Stow Function Check; and paragraph 2.I., Fan Reverser Operational Check.

(2) Within every 7,000 hours TSLI on Airbus A300 series airplanes with a Three Light Reverser Indication Circuit configuration, and with TRAS locks installed, perform repetitive inspections and checks.

(3) On Airbus A300 series airplanes with a Two Light Reverser Indication Circuit configuration, and without TRAS locks installed, perform repetitive inspections and checks at the following:

(i) Within every 2,500 hours TSLI, perform paragraph 2.D., Translating Cowl Air Seal, Dagmar Fairing and Aft Frame Inspection; and paragraph 2.I., Fan Reverser Operational Check.

(ii) Within every 6,000 hours TSLI, perform paragraph 2.C., Pneumatic Drive Motor (PDM) Disc Brake Holding Torque Check; paragraph 2.E., Feedback Rod to Yoke Alignment Check and Inspection of Feedback Yoke and Feedback Rod; paragraph 2.G., Translating Cowl Auto Re-Stow Function Check; paragraph 2.H., Over Pressure Shutoff Valve (OPSOV) Indication Check; and paragraph 2.I., Fan Reverser Operational Check.

(4) On Airbus A300 series airplanes with a Two Light Reverser Indication Circuit configuration, and with TRAS locks installed, perform repetitive inspections and checks within every 7,000 hours TSLI.

Initial and Repetitive Inspections for CF6–80A1/A3 Series Turbofan Engines

(h) For CF6–80A1/A3 series turbofan engines installed on Airbus A310–200 airplanes, perform initial and repetitive thrust reverser inspections using Section 2, Accomplishment Instructions, of MRAS ASB No. CF6–80A1/A3 S/B 78A1002, Revision 5, dated July 19, 2007, at the following:

(1) For initial inspection, within 1,500 hours TIS after the effective date of this AD.

(2) For repetitive inspections, within every 7,000 hours TSLI.

Initial Inspection for CF6–80C2A Series Turbofan Engines

(i) For CF6–80C2A series turbofan engines, perform initial thrust reverser inspections using Section 2, Accomplishment Instructions, of MRAS ASB No. CF6–80C2A1/A2/A3/A5/A8/A5F S/B 78A1015, Revision 7, dated August 30, 2007, at the following:

(1) On Airbus A300–600 and A310 series airplanes with left-hand and right-hand reverser halves that do not have the double/backup P-seal introduced by MRAS SB No. CF6–80C2 S/B 78A1005, and that do not have locking actuator assemblies (LAAs) installed, within 600 hours TIS after the effective date of this AD.

(2) On Airbus A300–600 and A310 series airplanes with left-hand and right-hand reverser halves that have the double/backup P-seal introduced by MRAS SB No. CF6–80C2 S/B 78A1005, or that have LAAs installed, within 7,000 hours TIS after the effective date of this AD.

Directional Pilot Valve (DPV) Pressure Switch Check on Airbus Airplanes With CF6–80C2A5F Engines Is Not Applicable

(3) The DPV pressure switch check per paragraph 2.F. is not applicable to Airbus airplanes with CF6–80C2A5F left-hand and right-hand fan reverser halves (model ES-CF6–5), because this check is performed

through the full authority digital electronic control fault detection system.

Repetitive Inspections for CF6–80C2A Series Turbofan Engines

(j) For CF6–80C2A series turbofan engines, perform repetitive thrust reverser inspections using Section 2, Accomplishment Instructions, of MRAS ASB No. CF6–80C2A1/A2/A3/A5/A8/A5F S/B 78A1015, Revision 7, dated August 30, 2007, at the following:

(1) On Airbus A300–600 and A310 series airplanes with left-hand and right-hand reverser halves that do not have the double/backup P-seal, introduced by MRAS SB No. CF6–80C2 S/B 78A1005, and that do not have LAAs installed, within every 600 hours TSLI.

(2) On Airbus A300–600 and A310 series airplanes with left-hand and right-hand reverser halves that have the double/backup P-seal, introduced by MRAS SB No. CF6–80C2 S/B 78A1005, or that have LAAs installed, within every 7,000 hours TSLI.

Engines That Fail an Inspection or Check

(k) On engines that fail an inspection or check required by this AD, perform corrective actions or deactivate the fan reverser per Section 2, Accomplishment Instructions, of the applicable MRAS ASB, before further flight.

Previous Credit

(l) Initial and repetitive inspections and checks of the thrust reverser actuation systems done before the effective date of this AD that use the following ASBs, comply with the requirements specified in this AD:

(1) MRAS ASB No. CF6–50 S/B 78A3001, Revision 2, dated December 18, 1997; and MRAS ASB No. CF6–50 S/B 78A3001, Revision 3, dated May 3, 2006.

(2) MRAS ASB No. CF6–80A1/A3 S/B 78A1002, Revision 3, dated January 21, 1999; and MRAS ASB No. CF6–80A1/A3 S/B 78A1002, Revision 4, dated May 3, 2006.

(3) MRAS ASB No. CF6–80C2 S/B 78A1015, Revision 5, dated January 21, 1999; and MRAS ASB No. CF6–80C2A1/A2/A3/A5/A8/A5F S/B 78A1015, Revision 6, dated May 3, 2006.

Alternative Methods of Compliance

(m) The Manager, Engine Certification Office, FAA, 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

(n) France AD 1999–422–IMP(B), dated October 20, 1999, also pertains to the subject of this AD.

(o) Contact Robert Green, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *Robert.green@faa.gov*; telephone (781) 238–7754; fax (781) 238–7199, for more information about this AD.

(p) You must use the service information specified in Table 1 of this AD to perform the inspections required by this AD. The Director of the Federal Register approved the incorporation by reference of the documents listed in Table 1 of this AD in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Middle River Aircraft Systems, Mail Point 46, 103 Chesapeake Park Plaza, Baltimore, MD, 21220, attn: Warranty Support, telephone: (410) 682–0094, fax: (410) 682–0100 for a copy of this service information. You may review copies at the FAA, New England Region, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

TABLE 1.—INCORPORATION BY REFERENCE

Middle River Aircraft Systems Alert Service Bulletin No.	Page	Revision	Date
CF6–50 S/B 78A3001 Total Pages: 50	All	4	August 30, 2007.
CF6–80A1/A3 S/B 78A1002 Total Pages: 38	All	5	July 19, 2007.
CF6–80C2A1/A2/A3/A5/A8/A5F S/B 78A1015 Total Pages: 36	All	7	August 30, 2007.

Issued in Burlington, Massachusetts, on January 15, 2008.

Peter A. White,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E8–975 Filed 1–23–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–29329; Directorate Identifier 2007–NM–205–AD; Amendment 39–15342; AD 2008–02–12]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model 717–200 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain McDonnell Douglas Model 717–200 airplanes. This AD requires modification of the conduit for the forward boost pump of the center fuel tank. This AD results from the finding that a potential chafing condition exists in the volute assembly of the forward boost pump for the center fuel tank. We are issuing this AD to prevent chafing of the fuel boost pump wiring that could lead to arcing to the inside of the 45-degree angle fitting, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

DATES: This AD is effective February 28, 2008.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of February 28, 2008.

ADDRESSES: 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 AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Samuel S. 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:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to certain McDonnell Douglas Model 717–200 airplanes. That NPRM was published in the **Federal Register** on October 11, 2007 (72 FR 57892). That NPRM proposed to require modification of the conduit for the forward boost pump of the center fuel tank.

Comments

We gave the public the opportunity to participate in developing this AD. We have considered the two comments received from the one commenter.

Support for the NPRM

AirTran Airways supports the NPRM.

Request To Allow Use of Original Issue of Service Bulletin

AirTran Airways requests that we revise this AD to specify that actions accomplished before the effective date of this AD in accordance with Boeing Service Bulletin 717–28–0007, dated August 22, 2002, are considered acceptable for compliance with the corresponding actions specified in paragraph (f) of this AD provided that a leak check of the conduit is accomplished in accordance with Boeing 717 Airplane Maintenance Manual (AMM) Task 28–22–28–700–801, ''Leak Test of the Fuel Pump Electrical Conduit.'' AirTran Airways has accomplished the actions specified in the original issue of the service bulletin on all applicable airplanes in its fleet. AirTran Airways states that Revision 1, dated September 23, 2003, of the service bulletin was published to provide a torque value for the conduits due to an instance of fuel leaking from the conduit at the front spar following accomplishment of the task. AirTran Airways notes that it accomplished a leak check of the conduit during accomplishment of the original issue of the service bulletin, and that the leak check was later added to the AMM in January 2004, as AMM Task 28–22–28–700–801. The leak check of the conduit ensured that the conduit was not leaking, in the absence of a specified torque value in the original issue of the service bulletin. AirTran Airways believes that, if operators have accomplished the modification in accordance with the original issue of the service bulletin, accomplishing a leak check of the conduits using AMM Task 28–22–28–700–801 should be acceptable to ensure that the conduits are not leaking in lieu of accessing the conduit connections again for a torque check.

We agree that work done in accordance with Boeing Service Bulletin 717–28–0007, dated August 22, 2002, is acceptable for compliance with the requirements of this AD provided that a leak check of the conduit is accomplished in accordance with Boeing 717 AMM Task 28–22–28–700–801. We have added a new paragraph (g) to this AD to allow credit for previous accomplishment.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD with the change described previously. We also determined that this change will not increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

There are about 77 airplanes of the affected design in the worldwide fleet. This AD affects about 61 airplanes of U.S. registry. The required actions take about 10 work hours per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the AD for U.S. operators is $48,800, or $800 per airplane.

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

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

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

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

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

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

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, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2008–02–12 McDonnell Douglas: Amendment 39–15342. Docket No. FAA–2007–29329; Directorate Identifier 2007–NM–205–AD.

Effective Date

(a) This airworthiness directive (AD) is effective February 28, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to McDonnell Douglas Model 717–200 airplanes, certificated in any category; as identified in Boeing Service Bulletin 717–28–0007, Revision 1, dated September 23, 2003.

Unsafe Condition

(d) This AD results from a finding that a potential chafing condition exists in the volute assembly of the forward boost pump for the center fuel tank. We are issuing this

AD to prevent chafing of the forward boost pump wiring that could lead to arcing to the inside of the 45-degree angle fitting, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Modification

(f) Within 78 months after the effective date of this AD, modify the conduit for the forward fuel boost pump of the center fuel tank, by accomplishing all of the actions specified in Boeing Service Bulletin 717–28–0007, Revision 1, dated September 23, 2003.

Credit for Actions Done According to Previous Issue of Service Bulletin

(g) Actions done before the effective date of this AD in accordance with Boeing Service Bulletin 717–28–0007, dated August 22, 2002, are acceptable for compliance with the requirements of paragraph (f) of this AD provided that a leak check of the conduit is accomplished in accordance with Boeing 717 Airplane Maintenance Manual (AMM) Task 28–22–28–700–801, ''Leak Test of the Fuel Pump Electrical Conduit.''

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, Los Angeles Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

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

Material Incorporated by Reference

(i) You must use Boeing Service Bulletin 717–28–0007, Revision 1, dated September 23, 2003, to do the actions required by this AD, unless the AD specifies otherwise.

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

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

(3) You may review copies of the service information incorporated by reference at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on January 14, 2008.

Stephen P. Boyd,

Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–971 Filed 1–23–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28375; Directorate Identifier 2007–NM–015–AD; Amendment 39–15346; AD 2008–02–16]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–200 and 767–300 Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Boeing Model 767–200 and 767–300 series airplanes. This AD requires reworking certain duct assemblies in the environmental control system (ECS). This AD results from reports of duct assemblies in the ECS with burned Boeing Material Specification (BMS) 8–39 polyurethane foam insulation. This AD also results from a report from the airplane manufacturer that airplanes were assembled with duct assemblies in the ECS wrapped with BMS 8–39 polyurethane foam insulation, a material of which the fire retardant properties deteriorate with age. We are issuing this AD to prevent a potential electrical arc from igniting the BMS 8–39 polyurethane foam insulation on the duct assemblies of the ECS, which could propagate a small fire and lead to a larger fire that might spread throughout the airplane through the ECS.

DATES: This AD becomes effective February 28, 2008.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of February 28, 2008.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Sue McCormick, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (303) 342–1082; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Boeing Model 767–200 and 767–300 series airplanes. That NPRM was published in the **Federal Register** on June 19, 2007 (72 FR 33701). That NPRM proposed to require reworking certain duct assemblies in the environmental control system (ECS).

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received.

Support for the Proposed AD

Boeing concurs with the requirements of this AD.

Request To Remove Airplane From the Proposed Applicability

Hawaiian Airlines requests that we revise the proposed AD to remove one of its airplanes from the proposed applicability. Hawaiian states that the airplane came to them with two ducts installed in the affected area that do not have insulation installed on them. Each of these ducts has a part number not listed in Boeing Service Bulletin 767–21A0167, Revision 1, dated December 19, 2006. We referred to Boeing Service Bulletin 767–21A0167, Revision 1, as the appropriate source of service information for doing the actions specified in the proposed AD. Hawaiian quotes text from a Boeing message, in which Boeing confirms that the two subject duct assemblies do not need rework in accordance with the service bulletin because neither of the ducts assemblies are wrapped with Boeing Material Specification (BMS) 8–39 polyurethane foam insulation.

We agree. We have verified that the subject airplane should not be subject to this AD for the reasons stated above. Therefore, we have revised the applicability of this final rule to remove the subject airplane from the applicability of this AD. We have also revised the Costs of Compliance section of this final rule to remove the cost for this airplane.

Request To Clarify Acceptable Compliance

Hawaiian Airlines also requests that we revise the proposed AD to add language to clarify whether or not BMS 8–300 insulation must be installed on an affected duct. Hawaiian reiterates that it has one airplane with two ducts installed, which do not have any insulation installed.

We do not agree that it is necessary to make the requested clarification. As stated previously, we have determined that the subject airplane is not subject to this AD. Therefore, we have made no change to the final rule in this regard.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD with the change described previously. We also determined that this change will not increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

There are about 129 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts cost per airplane	Average cost per airplane	Number of U.S.-registered airplanes	Average fleet cost
Duct assembly rework	7, per duct (average 50 ducts per airplane).	$80	$4,955	$32,955	95	$3,130,725

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

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

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

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

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

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

2008–02–16 Boeing: Amendment 39–15346. Docket No. FAA–2007–28375; Directorate Identifier 2007–NM–015–AD.

Effective Date

(a) This AD becomes effective February 28, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model 767–200 and 767–300 series airplanes, certificated in any category; as identified in Boeing Service Bulletin 767–21A0167, Revision 1, dated December 19, 2006; excluding variable number VK031.

Unsafe Condition

(d) This AD results from reports of duct assemblies in the environmental control system (ECS) with burned Boeing Material Specification (BMS) 8–39 polyurethane foam insulation. This AD also results from a report from the airplane manufacturer that airplanes were assembled with duct assemblies in the ECS wrapped with BMS 8–39 polyurethane foam insulation, a material of which the fire retardant properties deteriorate with age. We are issuing this AD to prevent a potential electrical arc from igniting the BMS 8–39 polyurethane foam insulation on the duct assemblies or the ECS, which could propagate a small fire and lead to a larger fire that might spread throughout the airplane through the ECS.

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.

ECS Duct Assembly Rework

(f) Except as provided by paragraph (g) of this AD, within 72 months after the effective date of this AD, rework the duct assemblies in the ECS for the air distribution system at sections 41, 45, and 46; the Gasper air system at sections 41, 43, 45, and 46; the forward electronic and electrical (E/E) compartment air supply; and the instrument panel cooling supply; in accordance with the Accomplishment Instructions and Appendices A and B of Boeing Service Bulletin 767–21A0167, Revision 1, dated December 19, 2006.

Optional Part Installed

(g) If an affected duct assembly having a part number other than part number 217T2109–12, or a part number other than any part number specified in the applicable figure of Boeing Service Bulletin 767–21A0167, Revision 1, dated December 19, 2006, is found installed, and that part number is listed as an optional part number in the table in paragraph 3.B.2., ''Optional Part Table,'' of the Accomplishment Instructions of the service bulletin: No rework is required for that duct assembly only.

Parts Installation

(h) As of the effective date of this AD, no person may install on any airplane an air distribution system, Gasper air system, forward E/E compartment air supply, or instrument panel cooling supply duct assembly with BMS 8–39 polyurethane foam insulation.

Alternative Methods of Compliance (AMOCs)

(i)(1) The Manager, Seattle Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

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

Material Incorporated by Reference

(j) You must use Boeing Service Bulletin 767–21A0167, Revision 1, dated December 19, 2006, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

(3) You may review copies of the service information incorporated by reference at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

Issued in Renton, Washington, on January 14, 2008.

Stephen P. Boyd,

Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–972 Filed 1–23–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–29170; Directorate Identifier 2007–NM–075–AD; Amendment 39–15345; AD 2008–02–15]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319 and A320 Series Airplanes

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

ACTION: Final rule.

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

> Some taperlocks used in the wing-to-fuselage junction at rib 1 were found to be non-compliant with the applicable specification, resulting in a loss of pre-tension in the fasteners. In such conditions, the structural integrity of the aircraft could be affected.

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

DATES: This AD becomes effective February 28, 2008.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of February 28, 2008.

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

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2141; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on September 13, 2007 (72 FR 52309). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> Some taperlocks used in the wing-to-fuselage junction at rib 1 were found to be non-compliant with the applicable specification, resulting in a loss of pre-tension in the fasteners. In such conditions, the structural integrity of the aircraft could be affected.
>
> This Airworthiness Directive mandates a repetitive internal inspection of the lower stiffeners, and a repetitive external inspection of the lower panels in center and outer wing box at level of rib 1 junction.

The corrective action includes contacting Airbus for repair instructions and repair if any crack is found. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received.

Request To Refer to Revised Service Information

The Air Transport Association (ATA), on behalf of one of its members, United Airlines, and Airbus ask that we refer to Airbus Service Bulletins A320–57–1129 and A320–57–1130, both Revision 02, both dated July 17, 2007, for accomplishing the specified actions.

We agree with the requests to refer to Revision 02 of Airbus Service Bulletins A320–57–1129 and A320–57–1130. In the NPRM, we referred to Airbus Service Bulletins A320–57–1129, and A320–57–1130, both Revision 01, both dated July 28, 2006, as the appropriate sources of service information for accomplishing the required actions. Revision 02 of the service bulletins updates the operator and aircraft effectivity to show the latest information. No additional work is required by these revisions of the service bulletins. We have changed paragraphs (f)(1) and (f)(2) of this AD to refer to Revision 02 of the service bulletins. We have also changed paragraphs (f)(1) and (f)(2) to give credit to operators that have done the actions previously in accordance with Revision 01 of the service bulletins. We have also revised the sentence giving credit for an earlier service bulletin in paragraph (f)(2) of this AD for clarity.

Request To Allow Installation of a Pin and Sleeve Fastener

ATA, on behalf of one of its members, Northwest Airlines (NWA), states that installation of a pin-and-sleeve fastener, instead of the taperlok fastener, should be allowed due to the practical difficulties in accomplishing the NPRM

as currently written. NWA notes that installation of the taperlok fasteners requires precision drilling and reaming of the tapered hole and countersink, and adds that industry data show that the installation of a MIL–B–85667 pin-and-sleeve fastener can be installed by conventional manual drilling and reaming of a standard hole with relative simplicity and still maintain the fatigue strength capability of the taperlok fastener. NWA adds that the fastener capability properties of the MIL–B–85667 pin-and-sleeve fastener (titanium tapered pin and aluminum sleeve) meet or exceed those of the Airbus taperlok fasteners for tensile, shear, and fatigue strength. NWA provided a table that identifies the fastener properties.

We do not agree with the commenters' request. The commenters have not provided sufficient data to demonstrate that this installation would adequately address the identified unsafe condition. Although the MIL–B–85667 pin-and-sleeve fastener material properties may be equal to or better than the taperlok fasteners, there are other considerations in selection of fasteners that must be addressed, in addition to proper drilling and reaming of the tapered hole and countersink. Therefore, we have not changed the AD in this regard. However, any operator may request an alternative method of compliance (AMOC) in accordance with the procedures in paragraph (g) of the AD, provided that sufficient data are submitted to substantiate that the proposed AMOC would provide an acceptable level of safety.

Conclusion

We reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the change described previously. This change will neither increase the economic burden on any operator nor increase the scope of the AD.

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect 583 products of U.S. registry. We also estimate that it would take about between 16 and 77 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of the AD on U.S. operators to be between $746,240 and $3,591,280, or between $1,280 and $6,160 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2008–02–15 Airbus: Amendment 39–15345. Docket No. FAA–2007–29170; Directorate Identifier 2007–NM–075–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective February 28, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A319 and A320 series airplanes, certificated in any category, all certified models, all serial numbers (MSN); except airplanes identified in paragraphs (c)(1) and (c)(2) of this AD. Model A320 series airplanes MSN 2164 through MSN 2688 that have partially received Airbus Modification 33421 in production are affected by the requirements of this AD.

(1) Model A319 series airplanes that have received Airbus Modifications 28238, 28162, and 28342 in production, or Airbus Modification 33421 in production.

(2) Model A320 series airplanes that have received Airbus Modification 33421 fully embodied in production.

Subject

(d) Air Transport Association (ATA) of America Code 57: Wings.

Reason

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

Some taperlocks used in the wing-to-fuselage junction at rib 1 were found to be non-compliant with the applicable specification, resulting in a loss of pre-tension in the fasteners. In such conditions, the structural integrity of the aircraft could be affected.

This Airworthiness Directive mandates a repetitive internal inspection of the lower stiffeners, and a repetitive external inspection of the lower panels in center and outer wing box at level of rib 1 junction.

The corrective action includes contacting Airbus for repair instructions and repair if any crack is found.

Actions and Compliance

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

(1) For A320–200 aircraft: Before the defined threshold or within the defined grace period after the effective date of this AD, whichever occurs later, as listed in paragraph 1.E., ''Compliance,'' of Airbus Service Bulletin A320–57–1129, Revision 02, dated July 17, 2007, and following the instructions given in the service bulletin, perform an internal ultrasonic inspection of the lower stiffeners in the center and outer wing box at the level of the rib 1 junction to detect cracks, and if any crack is found, before further flight contact Airbus for repair instructions and repair. Repeat this inspection at the intervals defined in paragraph 1.E., ''Compliance,'' of the service bulletin. Actions done before the effective date of this AD in accordance with Airbus Service Bulletin A320–57–1129, Revision 01, dated July 28, 2006, are acceptable for compliance with the corresponding actions of this paragraph.

(2) For all aircraft: Before the defined threshold or within the defined grace period after the effective date of this AD, whichever occurs later, as listed in paragraph 1.E., ''Compliance,'' of Airbus Service Bulletin A320–57–1130, Revision 02, dated July 17, 2007, and following the instructions given in the service bulletin, perform an external ultrasonic inspection of the lower stiffeners in the center and outer wing box at the level of the rib 1 junction to detect cracks, and if any crack is found, before further flight contact Airbus for repair instructions and repair. Repeat this inspection at the intervals defined in paragraph 1.E., ''Compliance,'' of the service bulletin. Actions done before the effective date of this AD in accordance with Airbus Service Bulletin A320–57–1130, dated September 10, 2004; or Revision 01, dated July 28, 2006; are acceptable for compliance with the corresponding actions of this paragraph.

(3) Modification of the aircraft in accordance with the instructions contained in Airbus Service Bulletins A320–57–1131, A320–57–1137, or A320–57–1140, all dated November 21, 2006; terminates the repetitive inspection requirements of this AD.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows:

(1) Although the MCAI or service information does not specify a compliance time for corrective action (repair of cracks), paragraphs (f)(1) and (f)(2) of this AD require that the corrective action be done before further flight.

(2) Although the MCAI and/or service information specify a compliance time for accomplishing the inspections after the effective date of the MCAI, this AD requires compliance within the specified compliance time after the effective date of this AD.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, 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: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2141; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Related Information

(h) Refer to MCAI EASA Airworthiness Directive 2007–0067R1, dated June 7, 2007; and Airbus Service Bulletins A320–57–1129 and A320–57–1130, both Revision 02, both dated July 17, 2007; for related information.

Material Incorporated by Reference

(i) You must use the Airbus service information specified in Table 1 of this AD to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France.

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

TABLE 1.—MATERIAL INCORPORATED BY REFERENCE

Airbus service bulletin	Revision	Date
A320–57–1129, including Appendix 01	02	July 17, 2007.
A320–57–1130, including Appendix 01	02	July 17, 2007.
A320–57–1131, including Appendix 01 and excluding Appendix 02	Original	November 21, 2006.
A320–57–1137, including Appendix 01 and excluding Appendix 02	Original	November 21, 2006.
A320–57–1140, including Appendix 01 and excluding Appendix 02	Original	November 21, 2006.

Issued in Renton, Washington, on January 14, 2008.

Stephen P. Boyd,

Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–970 Filed 1–23–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28973; Directorate Identifier 2007–NM–118–AD; Amendment 39–15344; AD 2008–02–14]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–400, –400D, and –400F Series Airplanes; Boeing Model 757 Airplanes; and Boeing Model 767 Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Boeing airplanes listed above. This AD requires an inspection of certain lighted pushbutton switches in the flight compartment for configuration 'D' master modules and part numbers and corrective action if necessary. This AD also provides an option to inspect panel assemblies for part numbers. This AD results from a report indicating that the integrated drive generator failed in flight due to a possible switch malfunction. We are issuing this AD to ensure that certain lighted pushbutton switches in the flight compartment do not malfunction and cause the flightcrew to be unable to control critical airplane systems and continue safe airplane operation.

DATES: This AD becomes effective February 28, 2008.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of February 28, 2008.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Georgios Roussos, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 917–6482; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Boeing Model 747–400, –400D, and –400F series airplanes; Boeing Model 757 airplanes; and Boeing Model 767 airplanes. That NPRM was published in the **Federal Register** on August 16, 2007 (72 FR 45986). That NPRM proposed to require an inspection of certain lighted pushbutton switches in the flight compartment for configuration 'D' master modules and part numbers and corrective action if necessary. That NPRM also provided an option to inspect panel assemblies for part numbers.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received.

Support for the NPRM

Boeing, the airplane manufacturer, concurs with the content of the NPRM.

Request To Remove Reference to Revision 1 of the Service Bulletins

Japan Airlines requests that we remove the reference in the NPRM to Boeing Alert Service Bulletins 747–33A2280 and 767–33A0087, both Revision 1, both dated September 25, 2003 (we referred to those service bulletins as appropriate sources of service information for doing the actions specified in the NPRM). The commenter notes that it has incorporated Boeing Alert Service Bulletins 747–33A2280 and 767–33A0087, both dated December 19, 2001, for its Model 747–400 and Model 767–200/–300 fleets. The commenter notes that it strictly controls the configuration 'D' master module. However, the commenter states it did not carry out some top assembly module part number changes according to the instructions of Revision 1 of the service bulletins because in some cases the original top assembly module part number was not indicated anywhere, or was indicated unclearly.

The commenter believes that it is impossible to follow the part number change indicated in Revision 1 of the service bulletins and notes that because it tracks the base module, it can ignore the top assembly module part number.

The commenter also states that Boeing agrees that Japan Airlines does not need to perform Revision 1 of the service bulletins because the changes to the bulletin caused by Revision 1 do not affect Japan Airlines' fleet/units.

We disagree with removing the reference to Boeing Alert Service Bulletins 747–33A2280 and 767–33A0087, both Revision 1. We acknowledge that each operator may wish to use different parts and have its own tracking methods. However, we cannot accommodate every operator's differences in each AD. We have determined that the best way to handle such circumstances is for operators to request an alternative method of compliance (AMOC) in accordance with paragraph (p) of this AD, rather than increasing the complexity of the AD by addressing each operator's unique situation. We have not revised this AD in this regard.

Conclusion

We have carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

There are about 2,511 airplanes of the affected designs in the worldwide fleet. This AD affects about 934 airplanes of U.S. registry.

The inspection of switches takes about 8 work hours per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the inspection for U.S. operators is $597,760, or $640 per airplane.

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

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

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

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

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

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

2008–02–14 Boeing: Amendment 39–15344. Docket No. FAA–2007–28973; Directorate Identifier 2007–NM–118–AD.

Effective Date

(a) This AD becomes effective February 28, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing airplanes listed in Table 1 of this AD, certificated in any category.

TABLE 1.—APPLICABILITY

Model—	As identified in Boeing Alert Service Bulletin—
747–400, –400D, and –400F series airplanes	747–33A2280, Revision 1, dated September 25, 2003.
757–200, –200CB, and –200PF series airplanes	757–33A0044, Revision 1, dated September 25, 2003.
757–300 series airplanes	757–33A0045, Revision 1, dated September 25, 2003.
767–200, –300, and –300F series airplanes	767–33A0087, Revision 1, dated September 25, 2003.
767–400ER series airplanes	767–33A0088, including Appendix A, dated December 19, 2001.

Unsafe Condition

(d) This AD results from a report indicating that the integrated drive generator (IDG) failed in flight due to possible switch malfunction. We are issuing this AD to ensure that certain lighted pushbutton switches in the flight compartment do not malfunction and cause the flightcrew to be unable to control critical airplane systems and continue safe airplane operation.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Service Bulletin References

(f) The term ''the service bulletin,'' as used in this AD, means the Accomplishment Instructions of the service bulletins listed in Table 1 of this AD, as applicable.

Note 1: The Boeing service bulletins refer to Korry Service Bulletin 433–33–05, dated July 23, 2001, as an additional source of service information for finding configuration 'D' switches, for replacing the switch master module with a configuration 'D' master module, and for doing various operational tests after the replacement.

Component Service Bulletin References

(g) The Boeing service bulletins listed in Table 1 of this AD refer to the Boeing component service bulletins specified in Table 2 of this AD as additional sources of service information for replacing the switch or switch master module at critical locations, for doing operational tests after the replacement, and for identifying new panel part numbers.

TABLE 2.—BOEING COMPONENT SERVICE BULLETINS: SECONDARY SOURCES OF SERVICE INFORMATION

Boeing Component Service Bulletin—	Date—	Model—	Critical location—
233N3203–21–01, Revision 1	September 25, 2003.	757 airplanes	Equipment Cooling Panel.
233N3204–30–02, Revision 1	September 25, 2003.	757 airplanes	Anti-ice Panel.
233N3206–28–02, Revision 1	September 25, 2003.	757–200, –200CB, and –200PF series airplanes.	Fuel Control Panel.
233N3209–24–03, Revision 1	September 25, 2003.	757 airplanes and 767–200, –300, and –300F series airplanes.	Electrical Systems Panel.
233N3211–24–02, Revision 1	September 25, 2003.	757 airplanes and 767 airplanes	Battery/Standby Power Panel.
233N3215–36–01, Revision 1	September 25, 2003.	757 airplanes	Bleed Air Panel Assembly.
233N3216–22–01, Revision 1	September 25, 2003.	757 airplanes and 767 airplanes	Yaw Damper Panel Assembly.

TABLE 2.—BOEING COMPONENT SERVICE BULLETINS: SECONDARY SOURCES OF SERVICE INFORMATION—Continued

Boeing Component Service Bulletin—	Date—	Model—	Critical location—
233N3219–33–01, including Appendix A	December 19, 2001.	757–200, –200CB, and –200PF series airplanes.	Emergency Lights/Passenger Oxygen Panel.
233N3223–31–03, Revision 1	September 25, 2003.	757 airplanes	Engine Start/Ram Air Turbine Panel Assembly.
233N3224–73–01, Revision 1	September 25, 2003.	757–200, –200CB, and –200PF series airplanes.	Electronic Engine Control Power Panel Assembly.
233N6203–26–10, Revision 1	September 25, 2003.	757 airplanes and 767–200, –300, and –300F series airplanes.	Auxiliary Power Unit/Cargo Fire Control Panel Assembly.
233T3210–33–01, Revision 1	September 25, 2003.	757 airplanes and 767 airplanes	Emergency Lights Panel.
233T3215–24–01, including Appendix A	December 19, 2001.	767–400ER series airplanes	Electrical Control Module Assembly.
233T3235–28–05, Revision 1	September 25, 2003.	767–200, –300, and –300F series airplanes.	Fuel Management Panel Assembly.
233T3236–21–05, Revision 1	September 25, 2003.	767 airplanes	Temperature Control Panel.
233T3237–36–04, Revision 1	September 25, 2003.	767 airplanes	Bleed Air Control Panel.
233T3241–30–03, Revision 1	September 25, 2003.	757–200, –200CB, and –200PF series airplanes, and 767–200, –300, and –300F series airplanes.	Wing and Engine Anti-ice Control Panel.
233T3242–73–02, Revision 1	September 25, 2003.	757 airplanes and 767–200, –300, and –300F series airplanes.	Electronic Engine Control Panel.
233T3244–74–03, Revision 1	September 25, 2003.	767 airplanes	Engine Ignition and Start Control Panel.
233T6211–26–01, including Appendix A	December 19, 2001.	767–400ER series airplanes	Auxiliary Power Unit and Cargo Fire Control Module Assembly.
233U3201–30–04, Revision 1	September 25, 2003.	747–400, –400D, and –400F series airplanes.	Rain Removal/Anti-ice Module.
233U3202–24–02, Revision 1	September 25, 2003.	747–400, –400D, and –400F series airplanes.	Electrical and Standby Power/Auxiliary Power Unit Start Module.
233U3203–36–01, Revision 1	September 25, 2003.	747–400, –400D, and –400F series airplanes.	Bleed Air Control Module.
233U3206–28–01, Revision 1	September 25, 2003.	747–400, –400D, and –400F series airplanes.	Engine Ignition Control/Fuel Jettison Module.
233U3208–22–02, Revision 1	September 25, 2003.	747–400, –400D, and –400F series airplanes.	Passenger Oxygen and Yaw Damper Module.
233U3214–26–06, Revision 1	September 25, 2003.	747–400, –400D, and –400F series airplanes.	Fire Control Module.
257U0002–32–04, including Appendix A	December 19, 2001.	747–400, –400D, and –400F series airplanes.	Landing Gear Actuator Control Lever Module Assembly.

Inspection

(h) *Within 60 months after the effective date of this AD:* Do a general visual inspection of the switches specified in paragraphs (h)(1), (h)(2), (h)(3), (h)(4), and (h)(5) of this AD, as applicable, to identify configuration 'D' master modules and the part number (P/N) of the switch, in accordance with the applicable service bulletin, except as provided by paragraph (i) of this AD.

Note 2: For the purposes of this AD, a general visual inspection is ''A visual examination of a interior or exterior area, installation or assembly to detect obvious damage, failure or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normal available lighting conditions such as daylight, hangar lighting, flashlight or drop-light and may require removal or opening of access panels or doors. Stands, ladders or platforms may be required to gain proximity to the area being checked.''

(1) For Model 757–200, –200CB, and –200PF series airplanes: Switches identified in step 1 and step 3 of Figure 1 of Boeing Alert Service Bulletin 757–33A0044, Revision 1, dated September 25, 2003.

(2) For Model 757–300 series airplanes: Switches identified in step 1 of Figure 1 of Boeing Alert Service Bulletin 757–33A0045, Revision 1, dated September 25, 2003.

(3) For Model 767–200, –300, and –300F series airplanes: Switches identified in step 1 of Figure 1 of Boeing Alert Service Bulletin 767–33A0087, Revision 1, dated September 25, 2003.

(4) For Model 767–400ER series airplanes: Switches identified in step 1 of Figure 1 of Boeing Alert Service Bulletin 767–33A0088, dated December 19, 2001.

(5) For all airplanes: Switches identified for the panel assemblies specified in the applicable service bulletin.

Optional Inspection

(i) Instead of doing the inspection required by paragraph (h) of this AD, operators may inspect the part number of the panel assemblies specified in paragraphs (i)(1) and (i)(2) of this AD, as applicable, at the time specified in paragraph (h) of this AD. If the part number is identified as a new part number in paragraph 2.E. ''Existing Parts Accountability'' or Appendix B of the applicable service bulletin, no further action is required. If the part number is not identified as a new part number, the inspection required by paragraph (h) of this AD must be done at the specified time.

(1) For switches identified in paragraphs (h)(1), (h)(2), (h)(3), and (h)(4) of this AD: P3–1 and P10 panel assemblies, as applicable.

(2) For switches identified in paragraph (h)(5) of this AD: The panel assemblies identified in the applicable service bulletin.

Corrective Action

(j) If during any inspection required by paragraph (h) of this AD, any switch is found that does not have a configuration 'D' switch master module and no switch part number specified in paragraph (j)(1)(i) or (j)(1)(ii) of this AD is found: Before further flight, do the actions specified in either paragraph (j)(1) or (j)(2) of this AD and do the part number revision, as applicable, specified in paragraph (j)(3) of this AD.

(1) Replace the switch with a switch specified in paragraph (j)(1)(i), (j)(1)(ii), or (j)(1)(iii) of this AD, in accordance with the applicable service bulletin, except as provided by paragraph (k) of this AD.

(i) Switches having Boeing P/N S231T290–4201 through –4325 inclusive.

(ii) Switches having Korry P/N 4336731004–4201 through –4325 inclusive.

Note 3: One-to-one switch correlation between the existing switches and the new part number switches can be found in Korry Service Bulletin 433–33–06, dated November 7, 2001.

(iii) Switches that have a configuration 'D' master module.

(2) Replace the switch master module with a new configuration 'D' master module in accordance with the applicable service bulletin.

(3) If all switches on a panel assembly have a configuration 'D' master module or have a switch part number specified in paragraph (j)(1)(i) or (j)(1)(ii) of this AD: Revise the part number of the panel assembly in accordance with the applicable service bulletin.

(k) If during any inspection required by paragraph (h) of this AD, a configuration 'D' switch master module is found or the switch part number is specified in paragraph (j)(1)(i) or (j)(1)(ii) of this AD on all switches for a panel assembly: Before further flight, revise the part number of the panel assembly, in accordance with the applicable service bulletin.

Contact the FAA/Removal and Installation Procedures

(l) If the applicable service bulletin specifies removal or installation of certain parts and does not specify removal or installation instructions: Before further flight, remove or install those parts according to a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, or by doing the actions specified in paragraph (l)(1) of this AD for removal or paragraph (l)(2) of this AD for installation, as applicable.

(1) Remove the module/panel assembly by doing the actions specified in paragraphs (l)(1)(i), (l)(1)(ii), and (l)(1)(iii) of this AD.

(i) Hold the module/panel assembly in position and loosen the quick-release screws.

(ii) Carefully lower the module/panel assembly from the overhead panel.

(iii) Remove the electrical connectors attached to the rear of the module/panel assembly.

(2) Install the module/panel assembly by doing the actions specified in paragraphs (l)(2)(i) and (l)(2)(ii) of this AD.

(i) Make sure that the module/panel assembly is correctly aligned, and connect the electrical connectors to the rear of the unit.

(ii) Carefully lift the module/panel assembly into position and install it with the quick-release screws.

Operational Tests

(m) If any panel assemblies, switches, or master modules are replaced during any action required by this AD: Before further flight, do all applicable operational tests in accordance with the applicable service bulletin, except as provided by paragraph (n) of this AD.

(n) Where paragraph 3.B.14.b.(3) of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–33A2280, Revision 1, dated September 25, 2003, specifies procedures to do a test of the engine ignition control/fuel jettison module assembly, this AD requires that operators dry-motor the engine to remove the fuel from the tailpipe before doing the procedures in paragraph 3.B.14.b.(3). All fuel must be removed from the engine tailpipe before performing the test, because during the test the engine igniter will be energized.

Actions Accomplished According to Previous Issue of Service Bulletins

(o) Actions accomplished before the effective date of this AD in accordance with Boeing Alert Service Bulletin 747–33A2280, 757–33A0044, 757–33A0045, or 767–33A0087, all dated December 19, 2001, are considered acceptable for compliance with the corresponding action specified in this AD, provided that the actions specified in this AD are done on the switches for the additional panel assemblies specified in Revision 1 of the service bulletin.

Alternative Methods of Compliance (AMOCs)

(p)(1) The Manager, Seattle ACO, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

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

Material Incorporated by Reference

(q) You must use the service bulletins listed in Table 3 of this AD to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for a copy of this service information. You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

TABLE 3.—MATERIAL INCORPORATED BY REFERENCE

Boeing Alert Service Bulletin—	Revision—	Dated—
747–33A2280	1	September 25, 2003.
757–33A0044	1	September 25, 2003.
757–33A0045	1	September 25, 2003.
767–33A0087	1	September 25, 2003.
767–33A0088, including Appendix A	Original	December 19, 2001.

Issued in Renton, Washington, on January 14, 2008.

Stephen P. Boyd,

Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–969 Filed 1–23–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–22492; Airspace Docket No. 05–AEA–020]

Amendment of Class E Airspace; St. Marys, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This action confirms the effective date of a direct final rule that amends a Class E airspace area to support Area Navigation (RNAV) Global Positioning System (GPS) Special Instrument Approach Procedures (IAPs) that serve the Elk Regional Medical Center (7PS9), St. Marys, PA.

DATES: Effective 0901 UTC, December 20, 2007. The Director of the Federal Register approves this incorporation by

reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Daryl Daniels, Airspace Specialist, System Support, AJO2–E2B.12, FAA Eastern Service Center, 1701 Columbia Ave., College Park, GA 30337; telephone (404) 305–5581; fax (404) 305–5572.

SUPPLEMENTARY INFORMATION:

Confirmation of Effective Date

The FAA published this direct final rule with a request for comments in the **Federal Register** on October 30, 2007 (72 FR 61296–61297). The FAA uses the direct final rulemaking procedure for a non controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on December 20, 2007. No adverse comments were received, and thus this notice confirms that effective date.

Issued in College Park, GA on December 17, 2007.

Mark D. Ward,

Manager, System Support Group, Eastern Service Center.

[FR Doc. 08–203 Filed 1–23–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–22490; Airspace Docket No. 05–AEA–018]

Amendment of Class E Airspace; Pottsville, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This action confirms the effective date of a direct final rule that amends a Class E airspace area to support Area Navigation (RNAV) Global Positioning System (GPS) Special Instrument Approach Procedures (IAPs) that serve the Pottsville Hospital (91PN), Pottsville, PA.

DATES: Effective 0901 UTC, December 20, 2007. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Daryl Daniels, Airspace Specialist, System Support, AJO2–E2B.12, FAA Eastern Service Center, 1701 Columbia Ave., College Park, GA 30337; telephone (404) 305–5581; fax (404) 305–5572.

SUPPLEMENTARY INFORMATION:

Confirmation of Effective Date

The FAA published this direct final rule with a request for comments in the **Federal Register** on November 2, 2007 (72 FR 62108–62110). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on December 20, 2007. No adverse comments were received, and thus this notice confirms that effective date.

Issued in College Park, GA, on December 17, 2007.

Mark D. Ward,

Manager, System Support Group, Eastern Service Center.

[FR Doc. 08–204 Filed 1–23–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–29375; Airspace Docket No. 07–AEA–06]

Amendment of Class E Airspace; State College, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; correction, confirmation of effective date.

SUMMARY: The Federal Aviation Administration published in the **Federal Register** of October 30, 2007, (72 FR 61293–61294), a document amending Class E airspace at State College, PA. This action technically corrects the geographical coordinates of the University Park Airport, adds the coordinates for the University Park Airport, adds the coordinates for the Instrument Landing System's (ILS) Localizer (LOC) and confirms the effective date of the direct final rule that amends Class E airspace to support an Instrument Approach Procedure serving the Centre Community Hospital (PS57), State College, PA.

DATES: Effective 0901 UTC, December 20, 2007. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Daryl Daniels, Airspace Specialist, System Support, AJO2–E2B.12, FAA Eastern Service Center, 1701 Columbia Ave., College Park, GA 30337; telephone (404) 305–5581; fax (404) 305–5572.

SUPPLEMENTARY INFORMATION:

Confirmation of Effective Date

The FAA published this direct final rule with a request for comments in the **Federal Register** on October 30 (72 FR 61293) amending Class E airspace to support a Special Copter Point in Space Instrument Approach Procedure into the Centre Community Hospital (PS57). The FAA uses the direct final rulemaking procedure for a non controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on December 20, 2007. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Correction to Final Rule

■ After publication, it was observed that a technical correction was required to correct the geographical coordinates for the University Park Airport and to add the University Park Airport's ILS LOC with its coordinates to the legal description. Therefore, in the **Federal Register** Docket No. FAA–2007–29375; Airspace Docket No. 07–AEA–06, published October 10, 2007, (72 FR 61293–61294) make the following correction. On page 61294, in the second column, immediately under ''University Park Airport, State College, PA'', correct the geographical coordinates to read ''(lat. 40°50′57″ N., Long. 77°50′55″ W.)'' On the next line add the following:

University Park Airport ILS LOC
(Lat. 40°50′38″ N., long. 77°51′30″ W.)

■ For verification and to avoid confusion, the entire description should read as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

AEA PA E5 State College, PA [AMENDED]

University Park Airport, State College, PA
(Lat. 40°50′57″ N., long. 77°50′55″ W.)
University Park Airport ILS LOC
(Lat. 40°50′38″ N., long. 77°51′30″ W.)
PENUE NDB
(Lat. 40°54′37″ N., long. 77°44′30″ W.)
Centre Community Hospital, State College, PA
Point in Space Coordinates
(Lat. 40°49′14″ N., long. 77°49′44″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of University Park Airport and within 3.1 miles each side of the University Park Airport ILS Runway 24 localizer course extending from the PENUE NDB to 9.2 miles northeast of the NDB; and that airspace within a 6-mile radius of the point in space (Lat. 40°49′14″ N., long. 77°49′44″ W.) serving the Centre Community Hospital.

* * * * *

Issued in College Park, GA, on December 17, 2007.

Mark D. Ward,

Manager, System Support Group, Eastern Service Center.

[FR Doc. 08–205 Filed 1–23–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 71

[Docket FAA No. FAA–2007–27430; Airspace Docket No. 07–ANM–4]

Establishment of Class E Airspace; Springfield, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects a final rule published in the **Federal Register** October 30, 2007 (72 FR 61300), Airspace Docket No. 07–ANM–4, FAA Docket No. FAA–2007–27430. In that rule, an error was made in the legal description for Springfield, CO. Specifically, the longitude referencing Springfield, Municipal Airport, CO stated ''* * * long. 103°37′05″ W.'' instead of ''* * * long. 102°37′05″ W.'' Also added to the legal description is the location of the TOBE VORTAC. This action corrects those errors.

DATES: *Effective Date:* 0901 UTC, February 14, 2008. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

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:

History

On October 30, 2007, a final rule for Airspace Docket No. 07–ANM–4, FAA Docket No. FAA–2007–27430 was published in the **Federal Register** (72 FR 61300), establishing Class E airspace in Springfield, CO. The longitude referencing Springfield Municipal Airport, CO was incorrect in that the longitude stated ''* * * long. 103°37′05″ W.'' instead of ''* * * long. 102°37′05″ W.''. Also added to the legal description is the location of the TOBE VORTAC. This action corrects those errors.

Correction to Final Rule

■ Accordingly, pursuant to the authority delegated to me, the legal description as published in the **Federal Register** on October 30, 2007 (72 FR 61300), Airspace Docket No. 07–ANM–4, FAA Docket No. FAA–2007–27430, and incorporated by reference in 14 CFR 71.1, is corrected as follows:

§ 71.1 [Amended]

■ On page 61301, correct the legal description for Springfield, CO, to read as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM CO, E5 Springfield, CO [New]

Springfield Municipal Airport, CO
(Lat. 37°27′31″ N., long. 102°37′05″ W.)
TOBE VORTAC
(Lat. 37°15′31″ N., long. 103°36′00″ W.)

That airspace extending upward from 700 feet above the surface within a 7.0-mile radius of Springfield Municipal Airport; that airspace extending upward from 1,200 feet above the surface beginning at TOBE VORTAC, thence north along V–169 to lat. 38°34′00″ N., thence to lat. 38°34′00″ N., long. 102°00′00″ W., thence to lat. 36°30′00″ N., long. 102°00′00″ W., thence west on lat. 36°30′00″ N. to V–81, thence northwest along V–81 to point of beginning.

* * * * *

Issued in Seattle, Washington, on January 3, 2008.

Clark Desing

Manager, System Support Group, Western Service Center.

[FR Doc. E8–846 Filed 1–23–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30587; Amdt. No. 3251]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This Rule establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective January 24, 2008. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 24, 2008.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability—All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Harry. J. Hodges, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or revoking SIAPs, Takeoff Minimums and/or ODPs. The complete regulatory description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, in addition to their complex nature and the need for a special format make publication in the **Federal Register** expensive and impractical. Furthermore, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums, and ODP listed on FAA forms is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs and the effective dates of the SIAPs, the associated Takeoff Minimums, and ODPs. This amendment also identifies the airport and its location, the procedure, and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as contained in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure before adopting these SIAPs, Takeoff Minimums and ODPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

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

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC on December 28, 2007.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, under Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures and/or Takeoff Minimums and/or Obstacle Departure Procedures effective at 0901 UTC on the dates specified, as follows:

PART 97— STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 14 FEB 2008

Bettles, AK, Bettles, LOC/DME RWY 1, Amdt 5A
Gadsden, AL, Northeast Alabama Regional, RNAV (GPS) RWY 6, Orig
Gadsden, AL, Northeast Alabama Regional, RNAV (GPS) RWY 18, Orig
Gadsden, AL, Northeast Alabama Regional, RNAV (GPS) RWY 24, Orig
Gadsden, AL, Northeast Alabama Regional, RNAV (GPS) RWY 36, Orig
Gadsden, AL, Northeast Alabama Regional, GPS RWY 24, Orig-B, CANCELLED
Gadsden, AL, Northeast Alabama Regional, VOR RWY 6, Amdt 13
Gadsden, AL, Northeast Alabama Regional, Takeoff Minimums and Obstacle DP, Amdt 3
Mobile, AL, Mobile Regional, ILS OR LOC RWY 14, Amdt 30
Mobile, AL, Mobile Regional, ILS OR LOC RWY 32, Amdt 6A
Mobile, AL, Mobile Regional, RNAV (GPS) RWY 14, Amdt 1
Mobile, AL, Mobile Regional, RNAV (GPS) RWY 32, Amdt 1
Mobile, AL, Mobile Regional, Takeoff Minimums and Obstacle DP, Orig
Troy, AL, Troy Muni, RNAV (GPS) RWY 14, Orig
Troy, AL, Troy Muni, RNAV (GPS) RWY 25, Orig
Troy, AL, Troy Muni, RNAV (GPS) RWY 32, Orig
Benton, AR, Saline County/Watts Field, GPS RWY 17, Orig-A, (CANCELLED)
Benton, AR, Saline County/Watts Field, GPS RWY 35, Orig-A, (CANCELLED)
Benton, AR, Saline County/Watts Field, VOR–A, Amdt 6, Orig-A, (CANCELLED)

Pagosa Springs, CO, Stevens Field, RNAV (GPS)–A, Orig
Pagosa Springs, CO, Stevens Field, Takeoff Minimums and Obstacle DP, Orig
LaVerne, CA, Brackett Field, ILS RWY 26L, Amdt 3
LaVerne, CA, Brackett Field, LOC RWY 26L, Orig
Modesto, CA, Modesto City-Co-Harry Sham Fld, ILS O RLOC/DME RWY 28R, Amdt 14
Placerville, CA, Placerville, RNAV (GPS) RWY 5, Orig
Placerville, CA, Placerville, GPS RWY 5, Amdt 1A, CANCELLED
Placerville, CA, Placerville, Takeoff Minimums and Obstacle DP, Amdt 2
Adel, GA, Cook County, RNAV (GPS) RWY 5, Orig
Adel, GA, Cook County, GPS RWY 5, Orig, CANCELLED
Augusta, GA, Augusta Regional At Bush Field, Takeoff Minimums and Obstacle DP, Amdt 12
Augusta, GA, Daniel Field, Takeoff Minimums and Obstacle DP, Amdt 5
Canton, GA, Cherokee County, RNAV (GPS) RWY 4, ORIG
Canton, GA, Cherokee County, GPS RWY 4, Amdt 1, CANCELLED
Thomson, GA, Thomson-McDuffie County, Takeoff Minimums and Obstacle DP, Orig
Vidalia, GA, Vidalia Regional, Takeoff Minimums and Obstacle DP, Amdt 1
Corning, IA, Corning Muni, RNAV (GPS) RWY 18, Orig
Corning, IA, Corning Muni, NDB RWY 18, Amdt 2
Benton, KS, Lloyd Strearman Field, RNAV (GPS) RWY 17, Orig
Benton, KS, Lloyd Strearman Field, GPS RWY 17, Orig, (CANCELLED)
Danville, KY, Stuart Powell Field, RNAV (GPS) RWY 12, Orig
Danville, KY, Stuart Powell Field, RNAV (GPS) RWY 30, Orig
Danville, KY, Stuart Powell Field, NDB–A, Amdt 8
Lafayette, LA, VOR RWY 4R, Amdt 2, (CANCELLED)
Austin, MN, Austin Muni, RNAV (GPS) RWY 17, Orig
Austin, MN, Austin Muni, VOR/DME–A, Amdt 2
Austin, MN, Austin Muni, VOR RWY 17, Amdt 2
Austin, MN, Austin Muni, VOR RWY 35, Amdt 2
Austin, MN, Austin Muni, Takeoff Minimums and Obstacle DP, Orig
Jackson, MN, Jackson Muni, RNAV (GPS) RWY 13, Orig
Jackson, MN, Jackson Muni, RNAV (GPS) RWY 31, Orig
Jackson, MN, Jackson Muni, GPS RWY 31, Amdt 1, (CANCELLED)
Jackson, MN, Jackson Muni, Takeoff Minimum and Obstacle DP, Orig
Harrisonville, MO, Lawrence Smith Memorial, RNAV (GPS) RWY 17, Orig
Harrisonville, MO, Lawrence Smith Memorial, RNAV (GPS) RWY 35, Orig
Harrisonville, MO, Lawrence Smith Memorial, GPS RWY 35, Orig-A, (CANCELLED)
Harrisonville, MO, Lawrence Smith Memorial, Takeoff Minimums and Obstacle DP, Orig
Corinth, MS, Roscoe Turner, ILS OR LOC RWY 18, Amdt 2
Corinth, MS, Roscoe Turner, RNAV (GPS) RWY 18, Amdt 1
Corinth, MS, Roscoe Turner, RNAV (GPS) RWY 36, Orig
Corinth, MS, Roscoe Turner, Takeoff Minimums and Obstacle DP, Orig
Winona, MS, Winona-Montgomery County, RNAV (GPS) RWY 3, Orig
Winona, MS, Winona-Montgomery County, RNAV (GPS) RWY 21, Orig
Winona, MS, Winona-Montgomery County, Takeoff Minimums and Obstacle DP, Orig
Rutherfordton, NC, Rutherford Co/Marchman Field, LOC RWY 1, Amdt 2A
Beatrice, NE, Beatrice Muni, VOR RWY 13, Amdt 17
Beatrice, NE, Beatrice Muni, VOR RWY 17, Amdt 1
Beatrice, NE, Beatrice Muni, VOR RWY 35, Amdt 8
Beatrice, NE, Beatrice Muni, Takeoff Minimums and Obstacle DP, Orig
Omaha, NE, Epply Field, ILS OR LOC RWY 32L, Amdt 1
Omaha, NE, Epply Field, ILS OR LOC/DME RWY 14L, Amdt 1
Omaha, NE, Epply Field, ILS OR LOC/DME RWY 14R, ILS RWY 14R (CAT II), ILS RWY 14R (CAT III), Amdt 4
Omaha, NE, Epply Field, RNAV (GPS) RWY 14L, Amdt 1
Omaha, NE, Epply Field, Takeoff Minimums and Obstacle DP, Orig
Las Vegas, NV, North Las Vegas, Takeoff Minimums and Obstacle DP, Amdt 3
Wagoner, OK, Hefner-Easley, RNAV (GPS) RWY 18, Amdt 1
Wagoner, OK, Hefner-Easley, RNAV (GPS) RWY 36, Amdt 1
Wagoner, OK, Hefner-Easley, Takeoff Minimums and Obstacle DP, Orig
Factoryville, PA, Seamans Field, RNAV (GPS) RWY 4, Orig
Factoryville, PA, Seamans Field, VOR OR GPS–A, Amdt 1, CANCELLED
Factoryville, PA, Seamans Field, Takeoff Minimums and Obstacle DP, Amdt 2
Aiken, SC, Aiken Muni, Takeoff Minimums and Obstacle DP, Amdt 1
Charleston, SC, Charleston AFB/Intl, Takeoff Minimums and Obstacle DP, Amdt 6
Arlington, TX, Arlington Muni, ILS OR LOC/DME RWY 34, Orig-A
Dallas, TX, Dallas Executive, ILS OR LOC RWY 31. Amdt 8
Ingleside, TX, T P MC Campbell, RNAV (GPS) RWY 13, Amdt 1
Ingleside, TX, T P MC Campbell, RNAV (GPS) RWY 31, Amdt 1
Kountze/Silsbee, TX, Hawthorne Field, RNAV (GPS) RWY 13, Orig
Kountze/Silsbee, TX, Hawthorne Field, NDB RWY 13, Amdt 3
Kountze/Silsbee, TX, Hawthorne Field, Takeoff Minimums and Obstacle DP, Orig
Luray, VA, Luray Caverns, NDB–A, Amdt 6
Luray, VA, Luray Caverns, RNAV (GPS) RWY 22, Orig
Luray, VA, Luray Caverns, GPS RWY 22, Amdt 1, CANCELLED
Pasco, WA, Tri-Cities, ILS OR LOC RWY 21R, Amdt 11A
Pasco, WA, Tri-Cities, RNAV (GPS) RWY 3L, Orig
Pasco, WA, Tri-Cities, RNAV (GPS) RWY 12, Orig
Pasco, WA, Tri-Cities, RNAV (GPS) RWY 30, Amdt 1
Pasco, WA, Tri-Cities, VOR RWY 21R, Amdt 5A
Appleton, WI, Outagamie County Regional, ILS OR LOC RWY 3, Amdt 17

Effective 13 MAR 2008

Rockland, ME, Knox County Regional, ILS OR LOC RWY 13, Amdt 1C
Waterville, MD, Waterville Robert LaFleur, ILS OR LOC RWY 5, Amdt 2B
Seattle, WA, Boeing Field/King County Intl, RNAV (GPS) Z RWY 13R, Orig-A

Effective 10 APR 2008

Oroville, CA, Oroville Muni, NDB RWY 1, Amdt 3, CANCELLED
Petaluma, CA, Petaluma Muni, VOR RWY 29, Orig, CANCELLED
Red Bluff, CA, Red Bluff Muni, NDB RWY 33, Amdt 2A, CANCELLED
Burlington, VT, Burlington Intl, ILS OR LOC/DME RWY 33, Amdt 1
Burlington, VT, Burlington Intl, Takeoff Minimums and Obstacle DP, Amdt 12
Newport, VT, Newport State, NDB–A, Amdt 3, CANCELLED

The FAA published an Amendment in Docket No. 30583, Amdt No. 3247 to Part 97 of the Federal Aviation Regulations (Vol 72, FR No. 239, Page 70774; dated December 13, 2007) under section 97.29 effective 14 February 2008, which is hereby rescinded as follows:

Cahokia/St Louis, IL, St Louis Downtown, ILS OR LOC RWY 30L, Amdt 9

[FR Doc. E8–853 Filed 1–23–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30588; Amdt. No. 3252]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This Rule establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are

designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective January 24, 2008. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 24, 2008.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169; or

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

Availability—All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Harry J. Hodges, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or revoking SIAPs, Takeoff Minimums and/or ODPs. The complete regulatory description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, in addition to their complex nature and the need for a special format make publication in the **Federal Register** expensive and impractical. Furthermore, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums, and ODP listed on FAA forms is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs and the effective dates of the SIAPs, the associated Takeoff Minimums, and ODPs. This amendment also identifies the airport and its location, the procedure, and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as contained in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure before adopting these SIAPs, Takeoff Minimums and ODPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

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

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC, on January 11, 2008.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, under title 14, Code of Federal Regulations, part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures and/or Takeoff Minimums and/or Obstacle Departure Procedures effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 14 FEB 2008

Monroeville, AL, Monroe County, RNAV (GPS) RWY 3, Orig-A

Jonesboro, AR, Jonesboro Muni, ILS OR LOC RWY 23, Amdt 1

Jonesboro, AR, Jonesboro Muni, RNAV (GPS) RWY 23, Orig

Jonesboro, AR, Jonesboro Muni, RNAV (GPS) RWY 31, Orig

Jonesboro, AR, Jonesboro Muni, VOR RWY 23, Amdt 10
Morrilton, AR, Morrilton Muni, RNAV (GPS) RWY 27, Orig
Morrilton, AR, Morrilton Muni, NDB OR GPS RWY 27, Orig, CANCELLED
Morrilton, AR, Morrilton Muni, Takeoff Minimums and Obstacle ODP, Orig
North Little Rock, AR, North Little Rock Muni, RNAV (GPS) RWY 5, Amdt 1
Beckwourth, CA, Nervino, RNAV (GPS) Z RWY 25, Orig-A
Placerville, CA, Placerville, RNAV (GPS) RWY 5, Orig
Placerville, CA, Placerville, GPS RWY 5, Amdt 1A, CANCELLED
Placerville, CA, Placerville, Takeoff Minimums and Obstacle DP, Amdt 2
Windsor Locks, CT, Bradley Intl, Takeoff Minimums and Obstacle DP, Amdt 2
Blakely, GA, Early County, LOC/NDB RWY 23, Amdt 1
Blakely, GA, Early County, Takeoff Minimums and Obstacle DP, Orig
Douglas, GA, Douglas Muni, ILS OR LOC RWY 4, Amdt 1
Douglas, GA, Douglas Muni, RNAV (GPS) RWY 4, Orig
Douglas, GA, Douglas Muni, RNAV (GPS) RWY 22, Orig
Douglas, GA, Douglas Muni, GPS RWY 4, Orig-B, CANCELLED
Douglas, GA, Douglas Muni, GPS RWY 22, Orig-B, CANCELLED
Norton, KS, Norton Muni, Takeoff Minimums and Obstacle DP, Amdt 1
Danville, KY, Stuart Powell Field, Takeoff Minimums and Obstacle DP, Orig
New Orleans, LA, Louis Armstrong New Orleans Intl, ILS OR LOC RWY 28, Amdt 7
New Orleans, LA, Louis Armstrong New Orleans Intl, RNAV (GPS) RWY 28, Amdt 1
Hagerstown, MD, Hagerstown Regional/Richard A. Henson Field, ILS OR LOC RWY 27, Amdt 9
Albuquerque, NM, Double Eagle II, Takeoff Minimums and Obstacle DP, Amdt 1
Las Vegas, NV, North Las Vegas, Takeoff Minimums and Obstacle DP, Amdt 3
Tulsa, OK, Richard Lloyd Jones JR, VOR/DME–A, Amdt 7
Factoryville, PA, Seamans Field, RNAV (GPS) RWY 4, Orig
Factoryville, PA, Seamans Field, Takeoff Minimums and Obstacle, DP Amdt 2
Factoryville, PA, Seamans Field, VOR OR GPS–A, Amdt 1, CANCELLED
Grove City, PA, Grove City, Takeoff Minimums and Obstacle DP, Amdt 3
Brady, TX, Curtis Field, RNAV (GPS) RWY 17, Orig
Brady, TX, Curtis Field, RNAV (GPS) RWY 35, Orig
Brady, TX, Curtis Field, NDB RWY 17, Amdt 4
Brady, TX, Curtis Field, GPS RWY 17, Orig, (CANCELLED)
Brady, TX, Curtis Field, Takeoff Minimums and Obstacle ODP, Orig
Cleburne, TX, Cleburne Muni, RNAV (GPS) RWY 15, Orig
Cleburne, TX, Cleburne Muni, RNAV (GPS) RWY 33, Orig
Cleburne, TX, Cleburne Muni, VOR/DME RNAV RWY 15, Orig-A, CANCELLED
Cleburne, TX, Cleburne Muni, VOR/DME RNAV RWY 33, Orig, CANCELLED
Cleburne, TX, Cleburne Muni, Takeoff Minimums and Obstacle ODP, Orig
New Braunfels, TX, New Braunfels Muni, RNAV (GPS) RWY 13, Orig
New Braunfels, TX, New Braunfels Muni, RNAV (GPS) RWY 17, Orig
New Braunfels, TX, New Braunfels Muni, RNAV (GPS) RWY 31, Orig
New Braunfels, TX, New Braunfels Muni, RNAV (GPS) RWY 35, Amdt 2
New Braunfels, TX, New Braunfels Muni, GPS RWY 13, Orig-B, CANCELLED
New Braunfels, TX, New Braunfels Muni, GPS RWY 17, Amdt 1, CANCELLED
New Braunfels, TX, New Braunfels Muni, GPS RWY 31, Amdt 1, CANCELLED
New Braunfels, TX, New Braunfels Muni, VOR/DME RNAV RWY 31, Orig-A, CANCELLED
San Antonio, TX, Stinson Muni, RNAV (GPS) RWY 32, Orig
San Antonio, TX, Stinson Muni, VOR RWY 32, Amdt 14
San Antonio, TX, Stinson Muni, Takeoff Minimums and Obstacle DP, Amdt 2

Effective 13 MAR 2008

Rockland, ME, Knox County Regional, ILS OR LOC RWY 13, Amdt 1C
Harbor Springs, MI, Harbor Springs, RNAV (GPS) RWY 10, Amdt 1
Harbor Springs, MI, Harbor Springs, RNAV (GPS) RWY 28, Amdt 2
Harbor Springs, MI, Harbor Springs, Takeoff Minimums and Obstacle DP, Amdt 2
Greenville, MS, Mid Delta Regional, ILS OR LOC RWY 18L, Amdt 9C
Wadsworth, OH, Wadsworth Muni, RNAV (GPS) RWY 2, Amdt 1
Wadsworth, OH, Wadsworth Muni, RNAV (GPS) RWY 20, Amdt 1
Wadsworth, OH, Wadsworth Muni, VOR/DME–A, Amdt 2
Clarion, PA, Clarion County, VOR–A, Amdt 3

Effective 10 APR 2008

Marshall, AK, Marshall Don Hunter Sr, RNAV (GPS)–A, Amdt 1
Marshall, AK, Marshall Don Hunter Sr, RNAV (GPS) RWY 7, Amdt 1
Centre, AL, Centre-Piedmont Cherokee County Rgnl, RNAV (GPS) RWY 7, Orig
Centre, AL, Centre-Piedmont Cherokee County Rgnl, RNAV (GPS) RWY 25, Orig
Centre, AL, Centre-Piedmont Cherokee County Rgnl, Takeoff Minimums and Obstacle DP, Orig
Leadville, CO, Lake County, Takeoff Minimums and Obstacle DP, Amdt 2
Olive Branch, MS, Olive Branch, ILS OR LOC RWY 18, Amdt 2

Effective 05 JUN 2008

Fargo, ND, Hector International, RADAR–1, Amdt 11, CANCELLED

[FR Doc. E8–1015 Filed 1–23–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30589; Amdt. No. 3253]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes in the National Airspace System, such as the commissioning of new navigational facilities, adding of new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective January 24, 2008. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 24, 2008.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability—All SIAPs are available online free of charge. Visit nfdc.faa.gov to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Harry J. Hodges, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (FDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of Title 14 of the Code of Federal Regulations.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAP and the corresponding effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP as modified by FDC/P–NOTAMs.

The SIAPs, as modified by FDC P–NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

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

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC, on January 11, 2008.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal regulations, Part 97, 14 CFR part 97, is amended by amending Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.33, and 97.35 [Amended]

By Amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

Effective Upon Publication

FDC date	State	City	Airport	FDC number	Subject
01/07/08	AK	JUNEAU	JUNEAU INTL	8/0472	LDA X RWY 8, AMDT 11A.

[FR Doc. E8–1012 Filed 1–23–08; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 520

Oral Dosage Form New Animal Drugs; Clindamycin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Novopharm Ltd. The ANADA provides for the veterinary prescription use of clindamycin hydrochloride oral capsules in dogs for the treatment of various infections due to susceptible bacterial pathogens.

DATES: This rule is effective January 24, 2008.

FOR FURTHER INFORMATION CONTACT: John K. Harshman, Center for Veterinary Medicine (HFV–104), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–9808, e-mail: *john.harshman@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Novopharm Ltd., 30 Novopharm Ct., Toronto, Ontario, Canada M1B 2K9, filed ANADA 200–383 that provides for the veterinary prescription use of CLINDAROBE (clindamycin hydrochloride) Capsules in dogs for the treatment of various infections due to susceptible bacterial pathogens. Novopharm Ltd.'s CLINDAROBE Capsules is approved as a generic copy of Pharmacia & Upjohn Co.'s ANTIROBE Capsules, approved under NADA 120–161. The ANADA is approved as of December 19, 2007, and 21 CFR 520.446 is amended to reflect the approval.

In addition, Novopharm Ltd. has not been previously listed in the animal drug regulations as a sponsor of an approved application. At this time, 21 CFR 510.600(c) is being amended to add entries for the firm.

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

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

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

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 520

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 520 are amended as follows:

PART 510—NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

■ 2. Section 510.600 is amended in the table in paragraph (c)(1) by alphabetically adding a new entry for ''Novopharm Ltd.'' and in the table in paragraph (c)(2) by numerically adding a new entry for ''043806'' to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * *	* *
Novopharm Ltd., 30 Novopharm Ct., Toronto, Ontario, Canada M1B 2K9	043806
* * *	* *

(2) * * *

Drug labeler code	Firm name and address
* *	* * *
043806	Novopharm Ltd., 30 Novopharm Ct., Toronto, Ontario, Canada M1B 2K9
* *	* * *

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

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

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

■ 4. In § 520.446, add paragraphs (a)(3) and (b)(3) to read as follows:

§ 520.446 Clindamycin capsules and tablets.

(a) * * *

(3) Each capsule contains the equivalent of 25, 75, or 150 mg clindamycin as the hydrochloride salt.

(b) * * *

(3) No. 043806 for use of tablets described in paragraph (a)(3) of this section.

* * * * *

Dated: January 14, 2008.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. E8–1199 Filed 1–23–08; 8:45 am]
BILLING CODE 4160–01–S

DEPARTMENT OF STATE

22 CFR Part 51

RIN 1400–AC28

[Public Notice: 6071]

Passports; Correction

AGENCY: Department of State.

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to the revised Passport rule published in the **Federal Register** on November 19, 2007, 72 FR 64930.

DATES: Effective on February 1, 2008.

FOR FURTHER INFORMATION CONTACT: Consuelo Pachon, Office of Legal Affairs and Law Enforcement Liaison, Bureau of Consular Affairs, 2100 Pennsylvania Avenue, NW., Suite 3000, Washington, DC., telephone number 202–663–2431.

Background

The rule reorganizes, restructures, and updates the passport regulations in order to make them easier for users to access the information, to better reflect current practice and changes in

statutory authority, and to remove outdated provisions.

Need for Correction

The final passport rule published on November 19, 2007 erroneously labels two sentences in the rule contained in 22 CFR 51.21(b) and (c) as a ''Note.'' This correction deletes the labels ''Note'' and corrects the numbering of the two provisions.

Correction

■ The final passport rule published on November 19, 2007 (72 FR 64930) is corrected as follows:

■ 1. On page 64933, 22 CFR part 51.21 is corrected by making the following correcting amendments:

PART 51—PASSPORTS

Section 51.21(b) and (c) is revised to read as follows:

§ 51.21 Execution of passport application.

* * * * *

(b) *Application by mail—persons in the United States.* (1) A person in the United States who previously has been issued a passport valid for 10 years in his or her own name may apply for a new passport by filling out, signing and mailing an application on the form prescribed by the Department if:

(i) The most recently issued previous passport was issued when the applicant was 16 years of age or older;

(ii) The application is made not more than 15 years following the issue date of the previous passport, except as provided in paragraph (e) of this section; and

(iii) The most recently issued previous passport of the same type is submitted with the new application.

(2) The applicant must also provide photographs as prescribed by the Department and pay the applicable fees prescribed in the Schedule of Fees for Consular Services (22 CFR 22.1).

(c) *Application by mail—persons abroad.* (1) A person in a foreign country where the Department has authorized a post to receive passport applications by mail who previously has been issued a passport valid for 10 years in his or her own name may apply for a new passport in that country by filling out, signing and mailing an application on the form prescribed by the Department if:

(i) The most recently issued previous passport was issued when the applicant was 16 years of age or older;

(ii) The application is made not more than 15 years following the issue date of the previous passport, except as provided in paragraph (e) of this section; and

(iii) The most recently issued previous passport of the same type is submitted with the new application.

(2) The applicant must also provide photographs as prescribed by the Department and pay the applicable fees prescribed in the Schedule of Fees for Consular Services (22 CFR 22.1).

* * * * *

Dated: January 18, 2008.

Ann Barrett,

Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. E8–1205 Filed 1–23–08; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[USCG–2007–0169]

RIN 1625–AA00

Safety Zone: Trent River Between New Bern and James City, NC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard will establish a safety zone on the waters of the Trent River between New Bern and James City, North Carolina in the vicinity of the U.S. Route 70 Highway Swing Bridge. This safety zone is necessary to provide for the safety of life on navigable waters during the movement of bridge construction equipment from the southern end of the bridge construction project to the northern end of the project.

DATES: This rule is effective from 10 a.m. on January 8, 2008 through 2 p.m. on January 24, 2008.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2007–0169 and are available for inspection or copying at Sector North Carolina 2301 East Fort Macon Road Atlantic Beach, NC 28512 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Commander Jennifer Williams, Prevention Department Head, United States Coast Guard Sector North Carolina at (252) 247–4570 or (252) 247–457046.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. The publishing of an NPRM would be impracticable and contrary to public interest since immediate action is needed to protect the maritime public from the hazards associated with this maintenance project. The necessary information to determine whether the construction poses a threat to persons and vessels was not provided with sufficient time to publish an NPRM. For the safety concerns noted, it is in the public interest to have this regulation in effect during the construction.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date would be contrary to the public interest, since immediate action is needed to ensure the public's safety.

Background and Purpose

From 10 a.m. to 2 p.m. on each Tuesday, Wednesday, and Thursday from January 8, 2008 through January 24, 2008 Balfour Beatty Infrastructure Inc. will relocate construction equipment in the vicinity of the U.S. Route 70 Highway Swing Bridge from James City, NC to New Bern, NC. To provide for the safety of the public, the Coast Guard will temporarily restrict access to this section of the Trent River during equipment relocation.

Discussion of Rule

The Coast Guard is establishing a temporary safety zone that will extend from the Norfolk Southern Railroad Bridge and Union Point, New Bern, NC to the U.S. Route 17 Highway Bridge at James City, NC, latitude 35°05.8′ N, longitude 77°02.2′ W. This zone will require mariners to avoid entry into the area. Entry into the zone will not be permitted except as specifically authorized by the Captain of the Port or his designated representative.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary.

Although this regulation will restrict access to the regulated area, the effect of this rule will not be significant because:

(i) The safety zone will be in effect for a limited duration of time and (ii) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this temporary final rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this temporary final rule will not have a significant economic impact on a substantial number of small entities. Although the regulated area will apply to waters of the Trent River, the zone will not have a significant impact on small entities because the zone will only be in place for a limited duration of time and maritime advisories will be issued in advance to allow the public to adjust their plans accordingly.

Assistance for Small Entities

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (34)(g), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' will be available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

Regulation

■ For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. A temporary § 165.T05–901 is added to read as follows:

§ 165.T05–901 Safety Zone: Trent River between New Bern and James City, North Carolina.

(a) *Regulated area:* The following area is a safety zone: waters of the Trent River, from the Norfolk Southern Railroad Bridge and Union Point New Bern, NC to the U.S. Route 17 Highway Bridge at James City, NC, latitude 35°05.8′ N, longitude 77°02.2′ W. All coordinates reference Datum NAD 1983.

(b) *Definitions: Captain of the Port Representative* any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port to act on his behalf.

(c) *Regulations:* (1) In accordance with the general regulations in section 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port or a Captain of the Port Representative. All vessel movement within the safety zone is prohibited except as specifically authorized by the Captain of the Port or a Captain of the Port Representative. The general requirements of section 165.23 also apply to this regulation.

(2) Persons or vessels requiring entry into or passage through any portion of the safety zone must first request authorization from the Captain of the Port, or his Representative, unless the Captain of the Port previously announced via Marine Safety Radio Broadcast on VHF Marine Band Radio channel 22 (157.1 MHz) that this regulation will not be enforced in that portion of the safety zone. The Captain of the Port can be contacted at telephone number (252) 247–4570 or (252) 247–4546, or by radio on VHF Marine Band Radio, channels 13 and 16.

(d) The Captain of the Port will notify the public of changes in the status of this zone by Marine Safety Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHz).

(e) *Enforcement period:* This rule will be enforced from 10 a.m. to 2 p.m. each Tuesday, Wednesday, and Thursday from January 8, 2008 through January 24, 2008.

Dated: December 14, 2007.

G.D. Case,

Commander, U.S. Coast Guard, Acting Captain of the Port North Carolina.

[FR Doc. E8–1133 Filed 1–23–08; 8:45 am]

BILLING CODE 4910–15–P

LIBRARY OF CONGRESS

Copyright Royalty Board

37 CFR Part 382

[Docket No. 2006–1 CRB DSTRA]

Determination of Rates and Terms for Preexisting Subscription Services and Satellite Digital Audio Radio Services

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Final rule and order.

SUMMARY: The Copyright Royalty Judges are announcing their final determination of the rates and terms for the digital transmission of sound recordings and the reproduction of ephemeral recordings by preexisting satellite digital audio radio services for the period beginning on January 1, 2007, and ending on December 31, 2012.

DATES: *Effective Date:* January 24, 2008.

Applicability Date: The regulations apply to the license period January 1, 2007, through December 31, 2012.

ADDRESSES: The final determination also is posted on the Copyright Royalty Board Web site at *http://www.loc.gov/crb/proceedings/2006-1/sdars-final-rates-terms.pdf*.

FOR FURTHER INFORMATION CONTACT: Richard Strasser, Senior Attorney, or Gina Giuffreda, Attorney Advisor. Telephone: (202) 707–7658. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION:

I. Introduction

This is a rate determination proceeding convened under 17 U.S.C. 803(b) and 37 CFR part 351. A Notice announcing commencement of proceeding with request for Petitions to Participate in such proceeding to determine the rates and terms of royalty payments under Sections 114 and 112 of the Copyright Act for the activities of preexisting subscription services (''PSS'') and preexisting satellite digital audio radio services (''SDARS'') was published in the **Federal Register** on January 9, 2006.[1] The rates and terms set in this proceeding apply to the period of January 1, 2008, through December 31, 2012 for PSS, and January 1, 2007, through December 31, 2012 for SDARS. 17 U.S.C. 804(b)(3)(B). The PSS royalty rates are provided in a separate order. For the SDARS, the instant order provides for a beginning rate of 6% of gross revenues, with increases during the term of the period. See *infra* at Section IV.C.3.d.

II. The Proceeding

The following entities filed Petitions in response to the January 9, 2006 request for Petitions to Participate: SoundExchange, Music Choice, Muzak LLC, XM, Sirius, Royalty Logic, Inc. (''RLI''), and THP Capstar Acquisition d/b/a DMX Music (''DMX''). The Copyright Royalty Judges (''Judges'') dismissed Muzak as a party on January 10, 2007.[2] On August 21, 2006, the Judges referred a novel material question of substantive law regarding the universe of preexisting subscription services under 17 U.S.C. 114(j)(11)[3] to the Register of Copyrights.[4] On October 20, 2006, the Register transmitted a Memorandum Opinion to the Board that addressed the novel question of law.[5] The Register concluded that

> for purposes of participating in a rate setting proceeding, the term ''preexisting subscription service'' is best interpreted as meaning the business entity which operates under the statutory license. A determination of whether DMX is the same service that was identified by the legislative history in 1998 and has operated continuously since that time requires a factual analysis that is beyond the scope of the Register's authority for questions presented under 17 U.S.C. 802(f)(1)(B).

[1] 71 FR 1455, Docket No. 2006–1 CRB DSTRA.

[2] Order Granting SoundExchange's Motion to Dismiss Muzak LLC, Docket No. 2006–1 CRB DSTRA.

[3] Section 114(j)(11) of the Copyright Act defines the term ''preexisting subscription service'' to mean ''a service that performs sound recordings by means of noninteractive audio-only subscription digital audio transmissions, which was in existence and was making such transmissions to the public for a fee on or before July 31, 1998, and may include a limited number of sample channels representative of the subscription service that are made available on a nonsubscription basis in order to promote the subscription service.'' 17 U.S.C. 114(j)(11).

[4] Order Granting in Part SoundExchange's Motion Requesting Referral of a Novel Question of Substantive Law and Denying Motion by THP Capstar Acquisition Corp. D/B/A DMX Music Requesting Proposed Briefing Schedule, Docket No. 2006–1 CRB DSTRA. In its motion SoundExchange contended that Sirius and DMX are not eligible for a statutory license for a ''preexisting subscription service'' because they are not the entities that were in existence and making digital audio transmissions on or before July 31, 1998, a requirement under Section 114 of the Copyright Act. *See* 71 FR at 64640.

[5] The Register's Memorandum Opinion was published in the **Federal Register** on November 3, 2006. 71 FR 64639.

71 FR 64640.

Subsequently, Sirius presented its case solely as an SDARS and not as a PSS in the instant proceeding. DMX withdrew from participation in the proceeding on October 30, 2006.[6] Following an unsuccessful negotiation period, the then-remaining parties filed written direct statements on October 30, 2006 (SoundExchange, Music Choice, Sirius, and XM) and on November 21, 2006 (RLI), respectively. RLI withdrew from the proceeding on March 16, 2007.[7] Music Choice and SoundExchange settled on June 12, 2007.[8] The Judges published the settlement for public comment in the **Federal Register** on October 31, 2007 (72 FR 61585) and published a Final Rule relating to PSS on December 19, 2007 (72 FR 71795).

Discovery was followed by live testimony. Testimony was taken from June 4, 2007, to July 9, 2007. XM presented testimony of the following witnesses: Mr. Gary Parsons, Chairman of the Board, XM; Mr. Eric Logan, Executive Vice President of Programming, XM; Mr. Mark Vendetti, Senior Vice President of Corporate Finance, XM; Mr. Stephen Cook, Executive Vice President for Automotive, XM; and Mr. Anthony Masiello, Senior Vice President of Operations, XM.

Sirius presented testimony from the following witnesses: Mr. Mel Karmazin, President and CEO, Sirius; Mr. Terrence Smith, Senior Vice President of Engineering, Sirius; Mr. Douglas Wilsterman, Senior Vice President and General Manager of the Automotive OEM Division, Sirius; Mr. Jeremy Coleman, Vice President and General Manager of Talk Entertainment and Information Programming, Sirius; Mr. Steven Cohen, Vice President of Sports Programming, Sirius; Mr. Steven Blatter, Senior Vice President of Music Programming, Sirius; Ms. Christine Heye, former Vice President, Research, Sirius; Mr. Michael Moore, Vice President, Customer Care and Sales Operations, Sirius; Mr. David J. Frear, Chief Financial Officer, Sirius; and Mr. Robert Law, Senior Vice President and General Manager of the Consumer Electronics Division, Sirius.

XM and Sirius jointly presented testimony from the following witnesses: Dr. John R. Woodbury, Vice President, CRA International and Mr. J. Armand Musey, President and Partner, New Earth, LLC.

SoundExchange presented testimony of the following witnesses: Dr. Yoram (Jerry) Wind, Professor of Marketing and a Lauder Professor, The Wharton School, University of Pennsylvania; Mr. Mark Eisenberg, Executive Vice President, Business and Legal Affairs, Global Digital Business Group, Sony BMG Music Entertainment; Ms. Barrie Kessler, Chief Operating Officer, SoundExchange, Inc.; Mr. Sean Butson, Chartered Financial Analyst and consultant; Mr. Edgar Bronfman, Jr., Chairman and CEO, Warner Music Group; Mr. Simon Renshaw, President, Strategic Artist Management; Dr. Janusz Ordover, Professor of Economics, New York University; Mr. Dan Navarro, singer, songwriter, recording artist; Mr. Edward Chemelewski, President, Blind Pig Records; Mr. Michael Kushner, Senior Vice President, Business and Legal Affairs, Atlantic Records; Mr. Lawrence Kenswil, President of Universal eLabs, a division of Vivendi Universal's Universal Music Group; Mr. Charles Ciongoli, Executive Vice President and Chief Financial Officer, Universal Music Group North America; Dr. Michael Pelcovits, Principal, Microeconomic Consulting & Research Associates, Inc.

The remaining parties filed written rebuttal statements on July 24, 2007. The rebuttal phase of the trial occurred from August 15, 2007 to August 30, 2007. XM presented the rebuttal testimony of Mr. Vendetti. Sirius presented the rebuttal testimony of Mr. Karmazin and Mr. Frear. Sirius and XM presented the joint rebuttal testimony of Dr. Roger G. Noll, Professor Emeritus of Economics, Stanford University; Dr. Erich Joachimsthaler, CEO, Vivaldi Partners; Dr. George Benston, John H. Harlan Professor of Finance, Accounting and Economics at the Goizueta Business School and Professor of Economics, Emory University; Mr. Daryl Martin, Vice President, Consor Intellectual Assessment Management; Dr. John Hauser, Management Science Area Head and Kirin Professor of Marketing, Massachusetts Institute of Technology; Mr. Bruce Silverman, marketing consultant; and Dr. Woodbury.[9]

SoundExchange presented the rebuttal testimony of Mr. Ciongoli; Dr. Ordover; Mr. Bruce Elbert, President, Application Technology Strategy, Inc.; Mr. Butson; Dr. Pelcovits; Mr. Eisenberg; Ms. Kessler; Dr. Wind; Dr. Steven Herscovici, Managing Principal, Analyst Group, Inc.; and Mr. George Mantis, President, The Mantis Group, Inc.

At the close of the evidence, the record was closed. In addition to the written direct statements and written rebuttal statements, the Judges heard 26 days of testimony, which filled over 7,700 pages of transcript, and over 230 exhibits were admitted. The docket contains over 400 pleadings, motions, and orders.

On October 1, 2007, after the evidentiary phase of the proceeding, the participants filed Proposed Findings of Fact and Conclusions of Law. Participants filed replies on October 11, 2007. Closing arguments occurred on October 17, 2007.

On December 3, 2007, the Copyright Royalty Judges issued the Initial Determination of Rates and Terms. Pursuant to 17 U.S.C. 803(c)(2) and 37 CFR part 353, SoundExchange filed a Motion for Rehearing. The Judges requested the SDARS to respond to the motion, which they did in a timely fashion. Having reviewed SoundExchange's motion and the SDARS' response, the Judges denied the motion for rehearing. Order Denying Motion for Rehearing, In the Matter of Determination of Rates and Terms for Preexisting Subscription Services and Satellite Digital Audio Radio Services, Docket No. 2006–1 CRB DSTRA (January 8, 2008). As reviewed in said Order, none of the grounds in the motion presented the type of exceptional case where the Initial Determination is not supported by the evidence. 17 U.S.C. 803(c)(2)(A); 37 CFR 353.1 and 353.2. The motion did not meet the required standards set by statute, by regulation and by case law. Nevertheless, the Judges were persuaded to clarify one aspect of the definition of Gross Revenues. Specifically, the Judges are adding the phrase ''offered for a separate charge'' to the regulatory language of subsection (3)(vi)(A) of the definition of Gross Revenues at § 382.11 to make clear that this portion of the definition dealing with data services does not contemplate an exclusion of revenues from such data services, where such data services are not offered for a separate charge from the basic subscription product's revenues.

[6] Notice by DMX, Inc. of its Withdrawal from Participation in the 2006 Copyright Royalty Board Proceeding Entitled ''Adjustment of Rates and Terms for Preexisting Subscription and Satellite Digital Audio Radio Services,'' Docket No. 2006–1 CRB DSTRA.

[7] Notice by Royalty Logic, Inc. of Its Withdrawal from Participation in the 2006 Copyright Royalty Board Proceeding Entitled ''Adjustment of Rates and Terms for Preexisting Subscription and Satellite Digital Audio Radio Services,'' Docket No. 2006–1 CRB DSTRA.

[8] Notice of Settlement, Docket No. 2006–1 CRB DSTRA (June 12, 2007).

[9] The Services also sought to present the testimony of Professor William W. Fisher, III, but the Judges granted SoundExchange's motion to strike Professor Fisher's rebuttal testimony. 8/15/07 Tr. at 11.

III. The Statutory Standards for Determining Royalty Rates

Section 801(b)(1) of the Copyright Act, 17 U.S.C., provides that the Copyright Royalty Judges shall ''make determinations and adjustments of reasonable terms and rates of royalty payments'' for the statutory licenses set forth in Sections 112(e) and 114.[10] The section then prescribes that the royalty rates applicable under Section 114(f)(1)(B), which is the performance license for sound recordings at issue in this proceeding, shall be calculated to achieve the following objectives: [11]

(A) To maximize the availability of creative works to the public.

(B) To afford the copyright owner a fair return for his or her creative work and the copyright user a fair income under existing economic conditions.

(C) To reflect the relative roles of the copyright owner and the copyright user in the product made available to the public with respect to relative creative contribution, technological contribution, capital investment, cost, risk, and contribution to the opening of new markets for creative expression and media for their communication.

(D) To minimize any disruptive impact on the structure of the industries involved and on generally prevailing industry practices.

17 U.S.C. 801(b)(1). Because of the importance of this language to our determination, the Copyright Royalty Judges undertake the following comprehensive review of the provisions and their interpretation.

A. Legislative Background

The Section 801(b)(1) factors owe their origin to the legislative process that produced the Copyright Act of 1976. The 1976 Act created three new statutory licenses [12]—cable, jukebox and noncommercial broadcasting—and established the Copyright Royalty Tribunal to adjust rates and terms and make royalty distributions to copyright owners where appropriate. An examination of the legislative history of the 1976 Act reveals that the motivation for adopting the Section 801(b)(1) factors arose from an exchange between Professor Ernest Gellhorn, on behalf of certain copyright users, and Professor Louis H. Pollack, on behalf of certain copyright owners, concerning the constitutionality of the Copyright Royalty Tribunal. Professor Gellhorn recommended that in order to bolster the constitutionality of the Tribunal, the Congress should, *inter alia*, adopt statutory standards beyond the vague criterion of ''reasonableness.'' *Hearings on H.R. 2223 before the Subcomm. on Courts, Civil Liberties, and the Administration of Justice of the House Comm. on the Judiciary, 94th* Cong., 1922 (1975). The Register of Copyrights, in her second supplementary report on the general revision of the copyright laws later that year, disputed the constitutional concerns of Professor Gellhorn but concluded that it would be ''wise to establish, in the statute, certain criteria beyond 'reasonableness' that each Panel is to apply to its decision-making.'' *Second Supplementary Report of the Register of Copyrights on the General Revision of the U.S. Copyright Law*, Chapter XV, p. 31 (1975). The House Judiciary Committee, in its subsequent report on the Senate revision bill, took heed of the Register's advice and stated in the report (but not the bill), that ''it is anticipated that the Commission [13] will consider the following objectives in determining a reasonable rate * * * '':

(1) The rate should maximize the availability of diverse creative works to the public.

(2) The rate should afford the copyright owner a fair income, or if the owner is not a person, a fair profit, under existing economic conditions, in order to encourage creative activity.

(3) The rate should not jeopardize the ability of the copyright user

(a) To earn a fair income, or if the user is not a person, a fair profit, under existing economic conditions, and

(b) To charge the consumer a reasonable price for the product.

(4) The rate should reflect the relative roles of the copyright owner and the copyright user in the product made available to the public with respect to relative contribution, technological contribution, capital investment, cost, risk, and contribution to the opening of new markets for creative expression and media for their communication.

(5) The rate should minimize any disruptive impact on the structure of the industries involved and on generally prevailing industry practices.

H.R. Rep. No. 94–1476, at 173–174 (1976) (footnote added). The House and Senate Conference yielded the revision bill as enacted and set forth the Section 801(b)(1) factors in their current form. Unfortunately, the Conference Report does not offer any discussion of the final language.

B. Prior Proceedings

There have been three statutory license proceedings involving the reasonable rate standard and the Section 801(b)(1) factors: A Section 116 jukebox rate adjustment by the Copyright Royalty Tribunal; a Section 115 mechanical rate adjustment, also by the Tribunal; and a proceeding under the Copyright Arbitration Royalty Panel (''CARP'') system administered by the Librarian of Congress for preexisting subscription services under the same Section 114(f)(1)(B) statutory license involved in this proceeding. All three of these decisions were the subject of judicial review.

1. The 1980 Jukebox License Proceeding

The Copyright Royalty Tribunal's first consideration of the reasonable rate standard and the Section 801(b)(1) factors involved the 1980 Adjustment of the Royalty Rate for Coin-Operated Phonorecord Players, better known as jukeboxes. 46 FR 884 (January 5, 1981). The Tribunal raised the $8 a year per jukebox fee that was set by statute in the 1976 Copyright Act to $50 per year phased in over a 2-year period. The rate remained in effect for a 10-year period from 1980 to 1990.

While the Tribunal's decision was somewhat lengthy, its consideration and application of the standard and the Section 801(b)(1) factors was not. Coming in the last section of its decision and amounting to less than a page, the Tribunal applied the factors to the $50 rate it derived from its consideration of ''marketplace analogies'' and determined that the selected rate was consistent with each. 46 FR 889. In reviewing the Tribunal's decision, the U.S. Court of Appeals for the Seventh Circuit gave no attention to the Section 801(b)(1) factors or the Tribunal's application of them, focusing instead on the appropriateness of the Tribunal's choice of ''marketplace analogies.'' *Amusement & Music Operators Ass'n.* v. *Copyright Royalty Tribunal,* 676 F.2d 1144 (7th Cir. 1982). The Tribunal decision was upheld.

2. The 1981 Mechanical License Proceeding

Less than one month after releasing the jukebox rate determination, the Tribunal issued its decision in the Adjustment of the Royalty Payable Under Compulsory License for Making

[10] The ''reasonable'' rates and terms requirement also applies to the statutory licenses set forth in 17 U.S.C. 115, 116, 118, 119, and 1004. Though the Section 119 license is referenced, there is currently no rate adjustment provided in the Copyright Act for that license.

[11] We note that the Section 801(b)(1) objectives, or factors, do not apply to the Section 112(e) license. For a discussion of this license's applicability to this proceeding, *see infra* at Section IV.D.

[12] The lone statutory license under the 1909 Copyright Act, the section 115 ''mechanical'' license for the making and distribution of phonorecords, was carried forward into the 1976 Act.

[13] The House revision bill created a Copyright Royalty Commission, whereas the Senate revision bill created a Copyright Royalty Tribunal. The Senate nomenclature was used in the final bill.

and Distributing Phonorecords, better known as the mechanical license proceeding. 46 FR 10466 (February 3, 1981). The mechanical license requires payment to copyright owners of musical works (songwriters and music publishers) for the creation and distribution of phonorecords of their works. In a lengthy decision, the Tribunal nearly doubled the existing rates and established a complex system for future interim adjustments during the 7-year license period to reflect increases in the average list price of record albums.

Unlike the jukebox proceeding, the Tribunal offered its views as to the 'reasonable' royalty standard and the Section 801(b)(1) factors. As to the 'reasonable' royalty standard, the Tribunal stated that ''[i]t is our opinion that the term reasonable in the statute is of dominating importance in reaching a final determination in this proceeding.'' 46 FR 10479. As to the meaning of the term ''reasonable,'' the Tribunal recalled Professor Gellhorn's and the Register of Copyrights' admonitions to the Congress to adopt standards in the 1976 Copyright Act and observed that ''Congress drafted the (Section 801(b)(1)) criteria in the broadest terms that it could, consistent with its intent to prevent a challenge to the constitutionality of the Tribunal.'' *Id.* (parenthetical added). The Tribunal went on and ''conclude[d], consistent with its Congressional mandate, that this Tribunal's adjustment must set a ''reasonable'' mechanical royalty rate designed to achieve four objectives, set forth in Section 801 of the Act* * *'' *Id.* The Tribunal then undertook an application of the record evidence to each of the Section 801(b)(1) factors and concluded that the 4 cent rate it had derived from the evidence and economic testimony of the parties satisfied all of the factors. *Id.* at 10479–81.

The U.S. Court of Appeals for the District of Columbia Circuit upheld the Tribunal's determination of the rates, but set aside the Tribunal's mechanism for adjusting the rates within the licensing period as being beyond the Tribunal's statutory authority. *Recording Industry Ass'n. of America* v. *Copyright Royalty Tribunal,* 662 F.2d 1 (D.C. Cir. 1981). In reviewing the rates, the Court discussed the Section 801(b)(1) factors not in the context of the Tribunal's interpretation or application of them, but rather in terms of the judicial standard of review to be applied. The Court concluded at least three aspects of the factors increased the deference owed to the Tribunal's conclusions. First, subsections (A) and (D)—the maximization of the availability of creative works to the public and minimization of disruption to the industries—''require determinations 'of a judgmental or predictive nature,' and the court must be aware that 'a forecast of the direction in which the future public interest lies necessarily involves deductions based on the expert knowledge of the agency.' '' *Id.* at 8 (citations omitted). Second, the Court noted that subsections (B) and (C)—the fair return and income to owners and users and relative roles of owners and users in the product—call for policy choices that should be owed considerable deference. *Id.* at 8–9. Finally, the Court observed:

> [T]he statutory factors pull in opposing directions, and reconciliation of these objectives is committed to the Tribunal as part of its mandate to determine ''reasonable'' royalty rates. Both the House and Senate had originally passed bills whose only instruction to the Tribunal was to assure that the royalty rate was reasonable, although the House report had stated objectives that it ''anticipated that the Commission will consider.'' As part of the compromise that produced the final structure of the Tribunal, most of those objectives were written into the statute,* * *, but the Tribunal was not told which factors should receive higher priorities. To the extent that the statutory objectives determine a range of reasonable royalty rates that would serve all these objectives adequately but to differing degrees, the Tribunal is free to choose among those rates, and courts are without authority to set aside the particular rate chosen by the Tribunal if it lies within a ''zone of reasonableness.''

Id. at 9 (footnotes omitted).

3. The Digital Performance Right in Sound Recordings Proceeding

The Tribunal never had occasion again to conduct a Section 801(b)(1) rate adjustment, and it was abolished in 1993 and replaced by the CARP scheme administered by the Librarian of Congress. Copyright Royalty Tribunal Reform Act of 1993, Pub. L. No. 103–198, 107 Stat. 2304. Subsequent to the Tribunal's abolition, Congress passed the Digital Performance Right in Sound Recordings Act of 1995, Pub. L. No. 104–39, 109 Stat. 336, which created the Section 114 digital performance right license that is the subject of this proceeding. Unlike prior statutory licenses where the Congress fixed the initial rates within the statute, the rates for the new digital performance right license were left to resolution by a CARP. The Librarian convened a CARP in 1997 for PSS and SDARS. The SDARS settled with copyright owners and withdrew from the proceeding,[14] and the CARP rendered a determination only with respect to the PSS. The Librarian reviewed the CARP's determination and rejected it with respect to the rate as well as to certain terms, and the U.S. Court of Appeals for the District of Columbia Circuit reviewed the Librarian's decision. The Court upheld the Librarian's rate determination but remanded certain terms adopted by the Librarian for lack of supporting evidence. *Recording Industry Ass'n of America, Inc.* v. *Librarian of Congress,* 176 F.3d 528, 532 (DC Cir. 1999).

While the CARP offered nothing by way of interpretation of the Section 801(b)(1) factors, it took a decidedly different approach from the Tribunal in applying them. Whereas the Tribunal first analyzed the economic benchmarks submitted by the parties, selected a royalty fee and then applied the factors sequentially to the record evidence to determine if the selected fee satisfied them, the CARP instead began its analysis with the factors. The CARP did not analyze the factors in order, instead beginning with subsection (C), followed by subsections (D), (A) and then (B). Curiously, the CARP's consideration of the parties' benchmarks occurred under its consideration of subsection (B), the factor requiring a balancing of fair return to the copyright owner and fair income to the copyright user. Then, at the end of the determination, the CARP provided a less than one-page conclusion resolving all of the factors in favor of the PSS. *In re: Determination of Statutory License Terms and Rates for Certain Digital Subscription Transmissions of Sound Recordings, Report of the Copyright Arbitration Royalty Panel,* Docket No. 96–5 CARP DSTRA, p. 62 (November 28, 1997).

The CARP's approach did not particularly vex the Librarian, but its terse conclusion that subsection (A)—maximization of creative works to the public—favored the PSS certainly did.

> There is no record evidence to support a conclusion that the existence of the digital transmission services stimulates the creative process. Instead, the Panel made observations concerning the development of another method for disseminating creative works to the public—a valid and vital consideration addressed in the statutory objective concerning the relative contributions from each party—but fails to discuss how the creation of a new mode of distribution will itself stimulate the creation of additional works.

[14] The terms and conditions of the agreement were never publicly disclosed.

Determination of Reasonable Rates and Terms for the Digital Performance of Sound Recordings (Final Rule and Order), 63 FR 25394, 25406 (May 8, 1998) (codified at 37 CFR part 260) (''*1998 PSS Rate Determination*''). The Librarian also faulted the CARP for failing to reconcile its conclusion with the Tribunal's determination in the 1980 jukebox rate adjustment proceeding that jukeboxes did not contribute to the maximization of creative works to the public. *Id.* at 25406–7. As to the other Section 801(b)(1) factors, the Librarian affirmed the CARP's determination, but he concluded that an upward adjustment of the rate was necessary because he found that the CARP's reliance upon a single private license agreement offered as a benchmark and its subsequent manipulation of the license fee amounted to arbitrary action. *Id.* at 25409. The Librarian increased the 5% of annual revenues fee proposed by the CARP to 6.5%, stating that the 6.5% rate met all of the Section 801(b)(1) factors. *Id.* at 25410.

Only the Recording Industry Association of America, Inc. (''RIAA'') challenged the Librarian's decision. In its petition for review, RIAA argued that the Librarian misinterpreted Section 801(b)(1) by equating ''reasonable'' royalty rates with those that are calculated to achieve the objectives of the Section 801(b)(1) factors. Rather, in RIAA's view, the statutory language imposes two separate requirements: the royalty fee must be (1) a ''reasonable copyright royalty rate,'' and (2) it must be then ''calculated to achieve'' the Section 801(b)(1) objectives. RIAA argued that a ''reasonable copyright royalty rate'' was one that affords fair market compensation, thus making market rates the starting point for application of the Section 801(b)(1) factors. *Recording Industry Ass'n of America, Inc.* v. *Librarian of Congress,* 176 F.3d 528, 532 (DC Cir. 1999).

The U.S. Court of Appeals for the District of Columbia Circuit rejected RIAA's position, ruling that the Librarian's interpretation of the statute was permissible under *Chevron U.S.A., Inc.* v. *Natural Resources Defense Council, Inc.,* 467 U.S. 837 (1984). 176 F.3d at 533. The Court went further and observed: ''Here, the Librarian determined that 'reasonable rates' are those that are calculated with reference to the four statutory criteria. This interpretation is not only permissible but, given that [Section] 114 rates are to be 'calculated to achieve' the four objectives of [Section] 801(b)(1), it is the most natural reading of the statute.'' *Id.; see also,* 176 F.3d at 534 (''Because it was reasonable for the Librarian to find that the term 'reasonable copyright royalty rates' is defined by the four statutory objectives, there is no need to look to Tribunal precedent interpreting the term 'reasonable rates' in other contexts.''). The Court did not discuss the Librarian's application of the Section 801(b)(1) factors to the record evidence, but ''den[ied] RIAA's petition for review with respect to the establishment of a 6.5 percent rate. *Id.* at 535.[15]

C. Approach of the Copyright Royalty Judges

Based upon the above discussion, the path for the Copyright Royalty Judges is well laid out. We shall adopt reasonable royalty rates that satisfy all of the objectives set forth in Section 801(b)(1)(A)–(D). In so doing, we begin with a consideration and analysis of the benchmarks and testimony submitted by the parties, and then measure the rate or rates yielded by that process against the statutory objectives to reach our decision. Section 114(f)(1)(B) also affords us the discretion to consider the relevance and probative value of any agreements for comparable types of digital audio transmission services that submit voluntary agreements under 17 U.S.C. 114(f)(1)(A). *See,* 17 U.S.C. 114(f)(1)(B) (''[I]n addition to the objectives set forth in Section 801(b)(1), the Copyright Royalty Judges *may* consider the rates and terms for comparable types of subscription digital audio transmission services and comparable circumstances under voluntary license agreements described in subparagraph (A).'') (emphasis added).

IV. Determination of Royalty Rates

A. Application of Section 114 and Section 112

Based on the applicable law and relevant evidence received in this proceeding, the Copyright Royalty Judges must determine rates for the Section 114 performance licenses and the associated Section 112 ephemeral reproduction licenses utilized by SDARS.

As previously discussed, the Copyright Act requires that the Copyright Royalty Judges establish rates for the Section 114 license that are reasonable and calculated to achieve the following four specific policy objectives: (A) To maximize the availability of creative works to the public; (B) to afford the copyright owner a fair return for his creative work and the copyright user a fair income under existing economic conditions; (C) to reflect the relative roles of the copyright owner and the copyright user in the product made available to the public with respect to relative creative contribution, technological contribution, capital investment, cost, risk, and contribution to the opening of new markets for creative expression and media for their communication; and (D) to minimize any disruptive impact on the structure of the industries involved and on generally prevailing industry practices. 17 U.S.C. 114(f)(1)(B) and 17 U.S.C. 801(b)(1).

With respect to the Section 112 license, the Copyright Act requires that the Copyright Royalty Judges establish rates for this license that most clearly represent those ''that would have been negotiated in the marketplace between a willing buyer and a willing seller'' and to take into account evidence presented on such factors as (1) whether the use of the services may substitute for or promote the sale of phonorecords and (2) whether the copyright owner or the service provider makes relatively larger contributions to the service ultimately provided to the consuming public with respect to creativity, technology, capital investment, cost and risk. 17 U.S.C. 112(e)(4).

Having carefully considered the relevant law and the evidence received in this proceeding, the Copyright Royalty Judges determine that the appropriate Section 114 performance license rate is 6.0% of gross revenues for 2007 and 2008, 6.5% for 2009, 7.0% for 2010, 7.5% for 2011 and 8.0% for 2012 and, further, that the appropriate Section 112 reproduction license rate is deemed to be embodied in the Section 114 license rate.

The applicable rate structure for the Section 114 license is the starting point for the Copyright Royalty Judges' determination.

B. The Rate Proposals of the Parties and the Appropriate Royalty Structure for Section 114 Performance License Applicable To Sdars

1. Rate Proposals

The contending parties present several alternative rate structures. In its second amended rate proposal, SoundExchange argues in favor of a monthly fee equal to the *greater of:* A percentage of gross revenues varying from 8% to 23% *or* a per subscriber rate varying from $0.85 per subscriber to $3.00 per subscriber. These applicable fees vary based on the actual number of

[15] The RIAA was successful in convincing the Court to vacate and remand the Librarian's determination with respect to terms on the grounds of lack of record evidence to support them. *Id.* at 536.

subscriptions reported by the service. For example, the lowest fee (i.e., the greater of 8% of gross revenues or $0.85 per subscriber) would be applicable for a number of subscriptions equal to less than 9 million. At the opposite extreme, the highest fee (i.e., the greater of 23% of gross revenues or $3.00 per subscriber) would be applicable for a number of subscriptions equal to or more than 19 million. While proposing that the percent of revenues alternatives increase only in response to subscriber growth over the license period, SoundExchange proposes that the per subscriber alternatives associated with particular subscriber numbers would be additionally adjusted at the beginning of each year starting with January, 2008 by the change in the consumer price index (CPI–U) over the preceding 12 months ending on November 1. SoundExchange Second Amended Rate Proposal (July 24, 2007) at 1–4.

Subsequently, SoundExchange defensively offered, in the alternative, a second ''option'' in which applicable rates would continue to vary with subscriber numbers but also would vary at each subscriber interval based on a per broadcast/per subscriber metric. For example, at the low end of this alternative proposal, if the number of subscriptions were equal to less than 9 million for an SDARS, $0.0000028 per subscriber would be applicable to each broadcast of a sound recording for the first 150,000 sound recordings broadcast each month and $0.0000008 per subscriber would be applicable to each broadcast of a sound recording thereafter. At the high end of this alternative, if the number of subscriptions were equal to more than 19 million for an SDARS, $0.00001 per subscriber would be applicable to each broadcast of a sound recording for the first 150,000 sound recordings broadcast each month and $0.000003 per subscriber would be applicable to each broadcast of a sound recording thereafter. With respect to this ''option,'' SoundExchange also proposes that the royalty rates associated with particular subscriber numbers would be additionally adjusted at the beginning of each year starting with January, 2008 by the change in the CPI–U over the preceding 12 months ending on November 1. SoundExchange Third Amended Rate Proposal (August 6, 2007) at 1–8.

By contrast, XM and Sirius initially proposed only a percentage of revenues fee structure equal to 0.88% of a licensee's quarterly gross revenues resulting from residential services in the United States to be applicable for the duration of the 2007–2012 license period. XM Rate Proposal (January 17, 2007) at § 26_.3; Sirius Rate Proposal (January 17, 2007) at § 26_.3. This proposal was subsequently revised in an amended proposal [16] that called for the establishment in 2007 of a quarterly license fee of $1.20 per play [17] of a copyrighted sound recording during the quarter, with subsequent years of the license period beginning with 2008 adjusted each year by the percentage change in combined SDARS subscribers during the preceding year. XM Amended Rate Proposal (July 24, 2007) at § 3_.3; Sirius Amended Rate Proposal (July 24, 2007) at § 3_.3. A further revision of this proposal was submitted as the Services' Second Amended Proposal of Rates and Terms and provided for the establishment in 2007 of a quarterly license fee of $1.60 per play of a copyrighted sound recording during the quarter, again with subsequent years of the license period beginning with 2008 adjusted each year by the percentage change in combined SDARS subscribers during the preceding year. Second Amended Proposal of Rates and Terms of Sirius Satellite Radio Inc. and XM Satellite Radio Inc. (October 1, 2007) at § 3_.3.

In other words, while the parties on both sides initially proposed rates based on a percentage of gross revenues (albeit with somewhat different definitions of gross revenues), they both subsequently submitted royalty payment proposals that could generally be described as ''per play'' or ''per broadcast'' rates. However, their purposes in proposing ''per play'' or ''per broadcast'' rates differ. While admitting the likelihood of increased administrative costs, the SDARS maintain that their ''per play'' mechanism is superior to a revenue-based rate structure because: (1) It allows the SDARS to respond to any substantial increases in fees by economizing on the use of music so as to reduce their payments and (2) it preserves the incentives of the SDARS to acquire more attractive nonmusic programming or to improve the quality of their radio devices. Woodbury WRT at 21. SoundExchange, on the other hand, while recognizing that there are benefits to a per performance rate structure such as adopted by the Judges in the recently concluded webcasting proceeding [18] (i.e., where a performance refers to one play of one sound recording to a single listener at a time), also recognizes that its ''per broadcast'' alternative is not the functional equivalent of a per performance rate structure. As a result, SoundExchange admits that its ''per broadcast'' mechanism does not engender the benefits of the usage metric adopted in *Webcaster II* and, further, that it is inferior to a percentage of revenue structure. Pelcovits WRT at 19, 25–26. At bottom, SoundExchange's alternative proposal is submitted defensively to protect against the possibility that, notwithstanding these weaknesses, this Court might nevertheless settle upon a per play or per broadcast approach without reducing what SoundExchange identifies as ''the most significant distortion in a static proposal of this nature''—the lack of proportionality between total listening and the number of broadcasts. Pelcovits WRT at 23. For this reason, SoundExchange offers a two-tier structure associated with seven specific subscriber intervals as part of its per broadcast/per subscriber proposal to help mitigate the potential adverse revenue impact of a decline in music broadcasts that is not fully matched by an equivalent decline in music listenership. Pelcovits WRT at 23–25.

2. Rate Structure

Because we have no true per performance fee proposal before us nor sufficient information from evidence of record to accurately transform any of the parties' proposals into a true per performance fee proposal, the Copyright Royalty Judges conclude that a revenue-based fee structure for the SDARS is the most appropriate fee structure applicable to these licensees.

First, the absence of a true per performance fee proposal that seeks to tie payment directly to actual usage of the sound recording by the licensees

[16] While the XM and Sirius amended rate proposal omits any specific mention of a revenue basis, their chief economic expert, Dr. Woodbury, nevertheless supplies a revised estimate of his recommended revenue-based rate in the course of his rebuttal testimony and uses that revised revenue-based rate as the basis for the SDARS' amended and second amended ''per play'' proposals. At bottom then, the SDARS' amended rate proposal does not scrap its revenue basis, but rather simply translates the revenue-based recommendation of 1.20% into a per play rate by dividing the revenues that would be garnered from the application of the revised revenue-based rate by the total number of estimated compensable plays broadcast by the SDARS in 2006. This results in a per play rate of $1.20 in their amended proposal based on 2006 revenues and a per play rate of $1.60 in their second amended proposal based instead on 2007 revenue projections. Woodbury WRT at 22; SDARS PFF at ¶¶ 845–846.

[17] ''Play'' is defined as the transmission of a sound recording by the SDARS, regardless of the number of listeners who tune in or listen to the transmission. XM Amended Rate Proposal (July 24, 2007) at § 3_.2(d); Sirius Amended Rate Proposal (July 24, 2007) at § 3_.2(d).

[18] *Digital Performance Right in Sound Recordings and Ephemeral Recordings (Final Rule and Order)*, 72 FR 24084 (May 1, 2007) (codified at 37 CFR part 380) (''Webcaster II'').

makes all the various alternative fee proposals of the parties into proxies for a usage metric at best. Although revenue merely serves as a proxy for measuring the value of the rights used, so also do the per play and per broadcast alternatives offered by the parties. Neither of the parties' alternatives to a revenue-based metric really measures actual usage. The SDARS ''per play'' proposal makes no attempt to measure the number of listeners to any particular sound recording, but rather transforms the revenue-based metric into a ''per play'' metric by applying that revenue rate to the transmission of a sound recording without regard to the number of listeners who tune in or listen to the transmission. Woodbury WRT at 22 and XM Amended Rate Proposal (July 24, 2007) at § 3_.2(d); Sirius Amended Rate Proposal (July 24, 2007) at § 3_.2(d); Second Amended Proposal of Rates and Terms of Sirius Satellite Radio Inc. and XM Satellite Radio Inc. (October 1, 2007) at § 3_.2(d).

Indeed, since the number of ''plays'' (i.e. transmission of a sound recording) for which the SDARS propose payment is not further related to the number of listeners to such transmissions, Dr. Woodbury admits that the per play rate is not even as good a proxy for usage as revenue without further annual adjustments for growth in subscribers. Woodbury WRT at 22. Similarly, the SoundExchange ''per broadcast'' rate proposal fails to relate royalty payments directly to usage. Even though the SoundExchange ''per broadcast'' proposal is tied to the number of SDARS subscribers, it remains, at best, a proxy for actual usage because, as Dr. Pelcovits admits, ''subscribers'' are not the functional equivalent of ''listeners'' and because the available data does not permit the precise determination of whether the music listened to by SDARS subscribers refers solely to the compensable sound recordings at question in this proceeding. Pelcovits WRT at Appendix at 1–3. In short, as Dr. Pelcovits states, ''the per broadcast/per subscriber metric simply does not provide an accurate and dynamic measure of listening/consumption.'' Pelcovits WRT at 25.

Second, the advocates of the ''per play'' and ''per broadcast'' rate structures effectively admit that, as proxies for usage, such measures are no better than revenue-based measures, as shown by their attempts to use changes in general subscriber levels as a rough proxy for measuring the impact of changes in the number of listeners. For example, Dr. Woodbury, after noting that the ''per-play payment does not account for any changes in aggregate music listening time during the license period,'' suggests ''accounting for such changes in an *approximate* way by increasing the per-play rate by the actual annual percentage change in the number of SDARS subscribers.'' Woodbury WRT at 22 (emphasis added). Similarly, SoundExchange's ''per broadcast/per subscriber'' rate proposal, ultimately ties increases in royalty rates to the achievement of specific subscriber levels that are only roughly related to the actual number of listeners to any given sound recording. SoundExchange Third Amended Rate Proposal (August 6, 2007) at 5–7. In short, both parties ultimately focus on a major driver of revenue growth (i.e., subscriber growth) as a proxy for usage because, without this additional adjustment, ''per play'' and ''per broadcast'' metrics are clearly poorer substitutes for a usage-based metric compared to a percentage of revenue approach. Consequently, notwithstanding the various adjustments made by advocates of the ''per play'' or ''per broadcast'' proposals they remain inextricably focused on revenues. Moreover, because the adjustments suggested to improve the ''per play'' and ''per broadcast'' proposals result in additional ambiguities rather than more precision, these alternatives may be even less satisfactory proxies for a usage-based metric than the percentage of revenue approach.

Third, upon careful review, we find that the SDARS' two proffered advantages of a ''per play'' metric as compared to a percentage of revenue measure are less advantageous than claimed. The SDARS argue that a ''per play'' rate provides the SDARS with more business flexibility because it allows them to respond to any substantial increases in fees by economizing on the plays of sound recordings so as to reduce their royalty costs. Woodbury WRT at 20; Karmazin WRT at 13. While the general proposition of enhancing business flexibility is usually advantageous (at least to the party obtaining such flexibility), the probability of obtaining the specific advantage described by Dr. Woodbury and Mr. Karmazin is reduced by the myriad of economic circumstances which must coalesce as necessary preconditions.[19] Further, the same flexibility may be achieved by other means.[20] At the same time, this business flexibility ''advantage'' raises serious questions of fairness precisely because the SDARS ''per play'' metric is a less than fully satisfactory proxy for listenership. Thus, fewer stations (ergo fewer plays) could be offered by the SDARS without a proportionate reduction in the number of transmissions actually heard. Under such circumstances, the copyright owner's per performance revenue would decline because of the shortcomings of the ''per play'' metric in question as a proxy for measuring actual usage. SX PFF at ¶¶ 1442–9. It is not fair to so clearly fail to properly value the performance rights at issue in this proceeding. Such a result is additionally at odds with the stated policy objective of the statute to afford the copyright owner a fair return for his creative work. 17 U.S.C. 801(b)(1). Similarly, the SDARS' contention that the adoption of a ''per play'' rate structure would preserve their incentives to improve the quality of their service (by leaving them with more revenue to acquire more attractive nonmusic programming or to improve the quality of their radio devices), is not an advantage equitably experienced by both parties. Rather, the advantage runs to the SDARS who stand to gain revenue while the copyright owner experiences a decline in the value of the performance rights at issue in this proceeding. Again, this is because number of plays can be reduced with a less than proportionate reduction in listenership. Furthermore, there is no guarantee that the SDARS will spend any additional revenue so acquired to improve the quality of their services; thus ''preserving an incentive'' is not the equivalent of insuring action of the type suggested by Dr. Woodbury based on that incentive.

In short, given that the two ''advantages'' of the ''per play'' approach stated by Dr. Woodbury are neither clear-cut nor of estimable likelihood, we are persuaded that the ''countervailing consideration'' of greater administrative costs raised by Dr. Woodbury clearly outweighs the

[19] From an economic point of view, for example, it would only make sense for the SDARS to reduce their use of music as an input in response to a royalty fee increase if the revenue they earned from the last dollar spent on music programming came to be outstripped by the revenue they earned from spending the same dollar on nonmusic programming. This assumes that a variety of relative revenue generation and relative input pricing circumstances have been simultaneously satisfied.

[20] For example, in light of the definition of ''gross revenues'' herein below in this determination, the SDARS could offer wholly nonmusic programming as an additional, separately priced premium channel/service without having the revenues from such a premium channel/service become subject to the royalty rate and, thereby, achieve the desired flexibility of offering more lucrative nonmusic programming without sharing the revenues from that programming with the suppliers of sound recording inputs.

tenuous benefits of the SDARS ''per play'' fee structure. SoundExchange in its proposed ''per broadcast/per subscriber'' approach attempts to mitigate some of the untoward effects of the SDARS ''per play'' approach through the addition of a two-tier fee structure that partially and indirectly addresses the absence of a true per performance measure reflective of actual listenership. However, we agree with Dr. Pelcovits that even as so modified, this approach still yields less than satisfactory results. Pelcovits WRT at 25 (''the per broadcast/per-subscriber [sic] metric simply does not provide an accurate and dynamic measure of listening/consumption''). Moreover, the tradeoff for this modest conceptual improvement in the ''per play'' fee structure is reliance on less than precise estimates of listenership and additional complexity in administration. On balance, then, we conclude that neither the SDARS' ''per play'' metric nor SoundExchange's ''per broadcast/per subscriber'' measure is superior to a revenue-based fee structure as a proxy for a true per performance fee structure for the services in this proceeding. Furthermore, a revenue-based fee structure at least offers clear administrative advantages to these parties and, therefore, reduced transactions costs compared to the ''per play'' and ''per broadcast/per subscriber'' alternatives proposed by the parties.

Fourth, while in *Webcaster II* we concluded that the evidence in the record of that proceeding weighed in favor of a per performance usage fee structure for both commercial and noncommercial webcasters, we further suggested that, in the absence of some of the more egregious problems noted therein, the use of a revenue-based metric as a proxy for a usage-based metric might be reasonable. *Webcaster II*, 72 FR 24090. In particular, one of the more intractable problems associated with the revenue-based metrics proposed by the parties in *Webcaster II*, 72 FR 24090, was the parties' strong disagreement concerning the definition of revenue for *nonsubscription* services. This was further complicated by questions related to applying the same revenue-based metric to noncommercial as well as commercial services. *See Webcaster II*, 72 FR 24094 n.15. The same degree of difficulty is not presented by the applicable facts in this proceeding. The parties to this proceeding, at least initially, all proposed a revenue-based metric and, while there were some differences in the definition of revenues in their initial proposals, no party has submitted any evidence regarding the impossibility of applying or complying with a revenue-based metric. That is not surprising, inasmuch as the parties have until now lived under a revenue-based regime. Therefore the parties are most familiar, and perhaps most comfortable, with the operation of a revenue-based metric. The value of such familiarity lies in its contribution towards minimizing disputes and, concomitantly, keeping transactions costs in check. Because XM and Sirius are both commercial subscription services and music is an integral part of each subscription service, focusing on gross revenues attributable to those subscriptions or derived in connection with the use of music in SDARS programming (e.g., advertising or sponsorship revenues attributable to such programming) provides a straightforward method of relating music fees to the value of the rights being provided.

For all of the above reasons, the Copyright Royalty Judges conclude that evidence in the record weighs in favor of a revenue-based fee structure for the SDARS. We find a sufficient clarity of evidence based on the record in this proceeding to produce a revenue-based metric that can serve as adequate proxy for a usage-based metric. Furthermore, there was no substantial evidence offered by any party to readily guide the calculation of a usage-based (i.e. per performance) metric as a substitute for the revenue-based approach long employed by the parties. Indeed, in stark contrast to the record in *Webcaster II*, neither the SDARS nor SoundExchange provided substantial evidence to indicate that a true per performance rate was susceptible of being calculated by the parties to this proceeding. Therefore, we find that a revenue-based measure is currently the most effective proxy for capturing the value of the performance rights at issue here, particularly in the absence of any substantial evidence of how some readily calculable true per performance metric could be applied to the SDARS.

3. Revenue Defined

In order to properly implement a revenue-based metric, a definition of revenue that properly relates the fee to the value of the rights being provided is required.[21] Although the SDARS and SoundExchange offered somewhat different formulations of how revenue should be defined in their initial rate proposals, the parties offered little evidence to support their respective proposed definitions of revenue. SoundExchange proposed an expansive reading of revenue to include ''all revenue paid or payable to an SDARS that arise from the operation of an SDARS service * * *'' SoundExchange Third Amended Rate Proposal (August 6, 2007) at § 38_.2(g). However, SoundExchange offers scant evidentiary support for this particularly broad yet vague definition. The SDARS, by contrast, offer a definition of gross revenues that apparently seeks to largely adapt the existing PSS definition of gross revenues, 37 CFR 260.2(e), to the nature of current SDARS services. XM Rate Proposal (January 17, 2007) at § 26_.2(d); Sirius Rate Proposal (January 17, 2007) at § 26_.2(d). With one exception, we find that the SDARS ''gross revenue'' definition in their initial fee proposal more unambiguously relates the fee to the value of the sound recording performance rights at issue in this proceeding. For example, the SDARS definition of ''gross revenues'' excludes monies attributable to premium channels of nonmusic programming that are offered for a charge separate from the general subscription charge for the service. The separate fee generated for such nonmusic premium channels is not closely related to the value of the sound recording performance rights at issue in this proceeding. Therefore, this proposed exclusion serves to more clearly delineate the revenues related to the value of the sound recording performance rights at issue in this proceeding.

The one exception to the SDARS definition of revenues that fails to meet the test of unambiguously relating the fee to the value of the sound recording performance rights is the use of the SDARS definition of a Music Channel in two places in their gross revenue definition—once in connection with a limitation on advertising revenues and again in an exclusion of subscription revenues solely derived from nonmusic channels. The SDARS define Music Channels to mean channels where sound recordings constitute 50% or more of the programming at SDARS proposed regulation § 26_.2(f), but their gross revenue definition at SDARS proposed regulation § 26_.2(d)(vi)(B) also implies that nonmusic channels are channels that are characterized as those with only ''incidental'' performances of sound recordings.[22] Because the latter

[21] Dr. Ordover simply describes the main consideration as follows: ''In sum, rates should reflect purchasers' willingness to pay for *music* content.'' Ordover WDT at 21 (emphasis added).

[22] The latter definition is more consistent with current SDARS programming. See Woodbury

Continued

interpretation is more consistent with the test of unambiguously relating the fee to the value of the sound recording performance rights at issue in this proceeding and because the SDARS offer no substantial evidence to support their 50% breakpoint, we decline to adopt the more cramped position stated in the SDARS' proposed definition of a Music Channel. Rather, we adopt the SDARS ''incidental'' performance of sound recordings formulation. Using the latter formulation, gross revenues would exclude both subscription and advertising revenues associated with channels that use only ''incidental'' performances of sound recordings as part of their programming.[23, 24]

A further consequence of the Copyright Royalty Judges adopting the revenue-based metric as a proxy for a usage-based metric with the definition of gross revenue described hereinabove is to eliminate the need for a rate structure formulated as a ''greater of'' comparison between gross revenue-based metrics and alternative revenue-based metrics that focus on the dollar value of subscriptions alone.

Although SoundExchange proposes an alternative per subscription dollar amount, the Judges do not find the basis for this alternative structure to be supported by persuasive evidence. For example, SoundExchange's expert economist, Dr. Pelcovits, simply asserts that its rate proposal ''sensibly follows a 'greater of' rate structure common to certain marketplace agreements'' without more. Pelcovits WDT at 4. Indeed, Dr. Pelcovits' recommended SDARS rate itself is not stated as a ''greater of'' alternative, but rather as *equivalent* dollar per subscriber or percent of revenue rates. Pelcovits WDT at 32, Pelcovits WRT at 39. SoundExchange's other economic expert, Dr. Ordover, similarly reads SoundExchange's per subscriber and percent of revenue rates as equivalent alternatives. Ordover WDT at 4. Neither Dr. Pelcovits nor any other SoundExchange witness offers a solid explanation of why a ''greater of'' rate structure makes sense in other marketplaces *together with* an explanation of how that rationale is also applicable to this marketplace, notwithstanding any differences observed between the marketplaces in question. Nor does SoundExchange present any persuasive evidence that the availability of this per subscription alternative is necessary because it is easier to administer and thus will reduce transactions costs. Finally, given the parameters of gross revenues as defined hereinabove, there is no evidence in the record to suggest that gross revenues could be reduced below the amount of revenues otherwise due from applicable subscriptions. For all these reasons, the Judges decline to establish such a duplicative structure.

C. The Section 114 Royalty Rates for the SDARS

1. The Applicable Standard

As previously noted hereinabove, *supra* at Section IV.A., the Copyright Act requires that the Copyright Royalty Judges establish rates for the Section 114 license that are reasonable and calculated to achieve the following four specific policy objectives identified in Section 801(b): (A) To maximize the availability of creative works to the public; (B) to afford the copyright owner a fair return for his creative work and the copyright user a fair income under existing economic conditions; (C) to reflect the relative roles of the copyright owner and the copyright user in the product made available to the public with respect to relative creative contribution, technological contribution, capital investment, cost, risk, and contribution to the opening of new markets for creative expression and media for their communication; and (D) to minimize any disruptive impact on the structure of the industries involved and on generally prevailing industry practices. 17 U.S.C. 114(f)(1)(B) and 17 U.S.C. 801(b)(1).

Both the copyright owners and the SDARS agree that a good starting point for the determination of what constitutes a reasonable rate encompassing the four policy factors is to focus on comparable marketplace royalty rates as ''benchmarks,'' indicative of the prices that prevail for services purchasing similar music inputs for use in digital programming ultimately made available to consumers. SDARS PFF at ¶ 810 and SX PFF at ¶ 279. We agree that ''comparability'' is a key issue in gauging the relevance of any proffered benchmarks. Although the applicable Section 114 statutory standard provides a broader scope for analyzing relevant ''benchmark'' rates than the ''willing buyer, willing seller standard'' applicable to the *Webcaster II* proceeding, nevertheless potential benchmarks are confined to a zone of reasonableness that excludes clearly noncomparable marketplace situations.

2. Comparability of Marketplace Rates

Notwithstanding their apparent general agreement that beginning with a relatively comparable marketplace benchmark is the best way to undertake the requisite analysis here, the parties disagree about what constitutes an appropriate benchmark. The SDARS argue that the most appropriate benchmarks, as analyzed by their expert economist, Dr. Woodbury, are (1) PSS rates applicable to cable subscription offerings by Music Choice; and (2) agreements between performing rights organizations (ASCAP and BMI) and the SDARS covering the digital public performance of musical works. On the other hand, SoundExchange maintains that the most appropriate benchmark agreements, as analyzed by its expert economists, Dr. Michael Pelcovits and Dr. Janusz Ordover, are: (1) The SDARS nonmusic programming content expenditures; (2) market agreements between record companies and a variety of services that digitally distribute their sound recordings; and (3) agreements between content providers and satellite television operators. We find, based on the available evidence before us, that no single market benchmark offered in evidence wholly satisfies the requisite analysis here, but rather that some evidence offered by both the SDARS and SoundExchange can serve to identify the parameters of a reasonable range of rates within which a particular rate most reflective of the four 801(b) factors can be located.

a. The Woodbury Benchmarks

The SDARS' expert economic witness, Dr. Woodbury, offers two alternative benchmarks for consideration as the starting point for rate determination in the instant matter: (1) The 2004–7 rate paid by Music Choice for sound recordings used in its cable subscription offering, or 7.25% of gross revenues, subject to certain adjustments which would reduce the effective rate for the SDARS to 1.20% of gross revenues; and (2) the aggregate current musical works rates paid to ASCAP and BMI, or 2.35% of gross revenues. In addition, the SDARS argue that certain other evidence in the record ''corroborates Dr. Woodbury's PSS-Derived Rate'' (e.g., the

Amended WDT at 6–7 and Ex. 3 and Ex. 4. It is also more consistent with the notion of a music channel espoused by SDARS' expert economist, Dr. Woodbury, who identifies all channels using commercially released sound recordings as ''music channels'' in his analyses. Woodbury Amended WDT at 7 and n.22.

[23] *See infra* at § 382.11 (definition of ''Gross Revenues'').

[24] The Judges do not address here the compensability of ''incidental'' performances of sound recordings; rather, the Judges find that reference to such ''incidental'' performances facilitates an unambiguous definition of nonmusic channels identifying substantial revenue generation unrelated to the sound recording rights at issue in this proceeding and which arises under circumstances clearly distinguishable from the joint music/nonmusic product typically offered by the SDARS.

''custom radio'' agreement between Yahoo! and Sony BMG, again subject to certain adjustments which would reduce the effective rate if applied to the SDARS to 2.57% of revenue).

i. An Adjusted Music Choice PSS Rate

With respect to the first of these proferred benchmarks, we find that Dr. Woodbury's assertion that the Music Choice cable television music offering is comparable to the services offered by the SDARS is unpersuasive. The Music Choice audio service is included as a part of a bundle of primarily audiovisually oriented services (i.e., television channels) offered over cable television systems to cable television subscribers at fixed locations, while the SDARS music channels are a substantial part of purely audio services provided to subscribers over devices designed in large part to compete with terrestrial radio in terms of equivalent mobility. Further, no evidence has been presented to indicate that cable TV subscribers utilize the Music Choice audio service except as incidental to their primary activity of television channel usage, while substantial evidence has been provided by both the SDARS and SoundExchange to indicate that music listening is an integral part of consumer activity with respect to SDARS transmissions. SX PFF at ¶¶ 333–5; Woodbury Amended WDT at 34. In short, the consumer products from which demand is derived for music inputs are clearly not comparable in these two markets. Furthermore, in contrast to the core SDARS product, there is evidence that consumer demand for the Music Choice offering on cable TV is relatively weak. SX PFF at ¶¶ 1298–1300. Since demand for the music input is a demand derived from its use in the consumer service offered and, in this case, the ultimate uses of the Music Choice music programming and SDARS music programming exhibit substantial differences so as to make them poor comparators, we find that the Music Choice ''benchmark'' provides little if any guidance as to a reasonable price for the music input used in the SDARS service.

We are also not persuaded that the so-called ''functionality'' adjustment applied by Dr. Woodbury in a purported effort to make his proposed Music Choice benchmark market more comparable to the SDARS target market achieves the desired result. The Woodbury ''functionality'' adjustment does not address adequately the salient consumer product differences noted above. In that sense, to refer to this adjustment as a ''functionality'' adjustment is a misnomer. Dr. Woodbury's ''functionality adjustment'' merely lists key characteristics of the music made available to SDARS consumers (e.g. mobility, quality of reception, broader playlists than typically available on terrestrial radio, etc.) for which music consumers are willing to pay enhanced revenues and then attributes *all* of the revenue associated with these characteristics to other inputs such as satellite technology under the unsubstantiated theory that such other inputs could produce the same level of revenue [25] absent any music to broadcast. Therefore, the Woodbury ''functionality'' adjustment is seriously flawed and makes little contribution to resolving the lack of comparability between the Music Choice cable TV music programming proposed benchmark market and the SDARS target market.

We conclude from the record before us that there is no basis to support the notion that music inputs in both these markets are equally productive in generating revenues for the users. That notion is artificially and inappropriately created by Dr. Woodbury's reduction of the capabilities associated with the music inputs used by the SDARS by restricting their use to the more limited capabilities of the music inputs used by Music Choice in its cable TV offering (e.g., no mobility, etc.). If anything, rather than adding to the downward adjustment to the Music Choice rate already made by Dr. Woodbury to account for music/nonmusic differences, it would seem more appropriate to adjust the proffered SDARS rate upwards to account for these particular mobility differences.[26]

In sum, the consumer products from which demand is derived for music inputs are clearly not comparable in these two markets and the proferred adjustments do not remedy this shortcoming. Because of the large degree of its incomparability, particularly as adjusted by Dr. Woodbury, the proposed Music Choice benchmark clearly lies outside the ''zone of reasonableness'' for consideration in this proceeding. Therefore, we find this particular benchmark cannot serve as a starting point for the 801(b) analysis that must be undertaken in this proceeding.

ii. The Musical Works Rates

The musical works rates benchmark proposed by the SDARS also fails to provide a reasonable benchmark in terms of comparability. This benchmark analysis tracks some similar arguments that failed to prevail in *Webcaster II.*

The Copyright Royalty Judges find that the musical works benchmark analysis offered by Dr. Woodbury is similarly flawed here for several reasons. First, the musical works benchmark analysis is based on a marketplace in which, while the buyers may be the same as in the SDARS marketplace, the sellers are different and they are selling different rights. *Webcaster II,* 72 FR 24094. The fact that an SDAR requires both sets of rights does not make them equivalent. Many products and services require several essential inputs, but that fact alone does not lead to price parity across those inputs. Ordover WRT at 19.

Second, contrary to Dr. Woodbury's assertions that the prices paid for the rights in each respective market should be the same, substantial empirical evidence shows that sound recording rights are paid multiple times the amounts paid for musical works rights in most digital markets (e.g., ringtones, digital downloads, music videos).[27] *Webcaster II,* 72 FR 24094; SX

[25] Although Dr. Woodbury uses the ''costs'' associated with these other inputs in his adjustment, he makes clear that those costs merely serve as a proxy for revenues attributable to the use of inputs. Woodbury Amended WDT at 23 (''The SRPR [sound recording performance right] fee paid by XM and Sirius would be higher only because of the added revenue (reflecting higher costs) attributable to providing an end-to-end mobile service, not necessarily because of the inherently higher value of music.'') Dr. Woodbury describes the costs of these other inputs as ''subscriber distribution and acquisition costs.'' Woodbury Amended WDT at 22.

[26] This is not to say that the music input that is sold to consumers as ''mobile music'' is *wholly* responsible for the consumer revenues generated by the product over and above the revenues that are generated by an otherwise identical but ''nonmobile music product,'' any more than the technical distribution vehicle is *wholly* responsible for those added revenues.

[27] The SDARS attempt to discount these particular disparities by implying that since the sound recording rates are negotiated in an unconstrained marketplace while the ASCAP musical works rates in these markets are subject to court supervision, the latter must necessarily be relatively lower because they are constrained by the threat of court intervention. (See, for example, SDARS RFF at ¶ 90.) But this argument is not persuasive, because it fails to show that the negotiated sound recording rates are greater than ''the price that a willing buyer and a willing seller would agree to in an arm's length transaction'' (i.e., the rate court standard for reasonableness as articulated in *U.S.* vs. *ASCAP (Salem Media),* 981 F. Supp 199, 210 (S.D.N.Y., 1997)).

The SDARS also appear to argue that the Librarian's statement in the 1998 PSS Rate Determination, at 63 FR 25405, that copyright owners of musical compositions and record companies ''do not share equal power to set rates in an unfettered marketplace,'' recognized that sound recordings enjoy relatively higher rates compared to musical works in other digital markets because of the exercise of relatively greater market power by the record companies as compared to the more constrained musical works seller. Yet, the SDARS reliance on the Librarian's decision in the *1998 PSS Rate Determination* is misplaced insofar as the Librarian was not focusing on comparative

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PFF at ¶¶ 1381–87, 1389–93. Thus, we conclude that the marketplace evidence from other digital markets submitted by SoundExchange casts substantial doubt on the reasonableness of using the proferred musical works rates as a benchmark for the sound recording rates to be determined in this proceeding, except as an indicator that a reasonable rate for sound recordings could *not* be as low as the musical works rate.

Third, the Copyright Royalty Judges find that Dr. Woodbury's equivalence argument also is flawed because of his effective reliance on the assumption of ''sunk costs'' as a justification. This assumption fails on both theoretical and empirical grounds for the same reasons that we rejected it in *Webcaster II.* Dr. Woodbury claims that, while the sellers in his benchmark market are not the same as in the target market, they stand in a similar position because for both musical works and sound recordings, the costs of producing the underlying intellectual property are effectively sunk, meaning that there is no incremental cost imposed on the sellers of either the musical work or sound recording by virtue of making the underlying intellectual property available for digital performance. Woodbury Amended WDT at 37. As a matter of theory, then, Dr. Woodbury's proposed benchmark analysis ignores the long-established pattern of investment in the recording industry. As we noted in *Webcaster II* at 72 FR 24094, not only are there some initial sunk investments, but there is a requirement of *repeated* substantial outlays year after year or, in other words, the repeated ''sinking'' of funds; and, if sellers are faced with the prospect of not recovering such sunk costs, then the incentive to produce sound recordings is diminished. In this case there is also substantial evidence of a substantially greater investment of this type in sound recordings as compared to musical works. SoundExchange PFF at ¶¶ 1399–1401, 1407. Furthermore, recording companies will necessarily make future investment decisions based on their best estimates of the revenue sources available to them in the future from all sources including revenue streams derived from the SDARS' use of sound recordings. Ordover WRT at 14 (''Record companies' incentives to produce new music are based on revenues from all available sources''). As we recognized in *Webcaster II* at 72 FR 24094 n.28, this is a dynamic economic process concerned with obtaining greater resources for future creative efforts. To suggest that the sound recording copyright owners should ignore such costs in their approach to pricing in the SDARS market makes little sense. At bottom, then, we find Dr. Woodbury's equivalence rationale for his proposed benchmark to be severely flawed. Moreover, as we pointed out above, there is ample empirical evidence in the record from other digital marketplaces to controvert Dr. Woodbury's premise that the market for sound recordings and the market for musical works are necessarily equivalent. SX PFF at ¶¶ 1381–87, 1389–93.

For all these reasons, the Judges find that Dr. Woodbury's proffered musical works benchmark is not useful as a starting point for our determination of a reasonable sound recording rate in this market and, further, that marketplace evidence from other digital markets submitted by SoundExchange shows that a reasonable rate for sound recordings could not be as low as the musical works rate.

iii. SDARS' Corroborative Evidence for PSS-Derived Rate

The SDARS argue that certain other evidence in the record corroborates Dr. Woodbury's PSS-derived rate of 1.2% of revenues: (1) The prior SDARS–RIAA agreement (in the range of 2.0% to 2.5% of revenues); (2) the SDARS Musical Works Agreements (suggested benchmark rate of 2.35%); (3) a ''custom radio'' agreement between Yahoo! and Sony BMG, subject to certain adjustments which would reduce the effective rate if applied to the SDARS to 2.57% of revenue; and (4) Dr. Pelcovits' nonmusic programming benchmark, also subject to certain adjustments which would reduce the effective rate if applied to the SDARS to 3.51% of revenue. We find that rates which are virtually 2 or 3 times as great (e.g. 2.35% or 3.51%) as the rate they are being used to corroborate (i.e. 1.2%) only serve to undermine any reasonableness that might be ascribed to the Woodbury PSS-derived rate of 1.2%. That is, even if the Woodbury PSS-derived rate was derived from an arguably comparable benchmark, this ''corroborative'' data all points in the direction that it is too low as adjusted.

Furthermore, we find that the musical works benchmark and the adjusted Pelcovits nonmusic programming benchmark themselves suffer from serious flaws. See *supra* at Section IV.C.2.a.ii. and *infra* at Section IV.C.2.b.ii. In addition, the SDARS–RIAA current agreement cannot be corroborative of a *reduced* rate going forward since it is not accompanied by any evidentiary showing that economic circumstances in this market have deteriorated. Finally, the rate terms from a ''custom radio'' agreement between Yahoo! and Sony BMG (which were not introduced to corroborate the PSS-adjusted rate but rather were introduced by Dr. Woodbury to ostensibly test the sensitivity of Dr. Ordover's analyses of other markets): (1) Were not shown to be representative of this category's agreements; and (2) suffer from the same flawed ''functionality'' adjustment as Dr. Woodbury's PSS-derived rate. In short, we find no persuasive evidence proffered by the SDARS that would cause us to alter our earlier finding that the PSS-derived rate as adjusted by Dr. Woodbury (i.e., 1.2% of revenues) clearly lies outside the ''zone of reasonableness'' for consideration in this proceeding.

b. The Pelcovits Benchmarks and Analyses

SoundExchange's expert economic witness, Dr. Pelcovits, offers two benchmarks for consideration as the starting point for determination of a royalty rate applicable to the SDARS: (1) Royalties of 23% for sound recordings based on Sirius' payments to Howard Stern for nonmusic content (Pelcovits Amended WDT at 8); and (2) royalties of 18.6% for sound recordings based on payments made in the aggregate by the SDARS for nonmusic programming, including payments made to Howard Stern (Pelcovits Amended WDT at 10). In addition, Dr. Pelcovits offers an alternative analysis that yields royalties of 18% for sound recordings based on a ''division of surplus'' analysis between nonmusic content and music content (Pelcovits WRT at 39 n.64).

i. The Stern Benchmark

Dr. Pelcovits offers his Stern analysis on the assumption that nonmusic content and music content are substitutes. He then focuses on one particular type of non-music content, Howard Stern's programming on Sirius. He next estimates that Sirius paid about 50% of revenue to Stern for each incremental subscriber that his

musical works and sound recording rate data from these other *digital* markets where record companies do not sell directly to consumers in the 1998 decision, but rather was evaluating the merits of an RIAA contention that record companies should receive more value from the performance right in sound recordings because the record companies garner more revenue from the use of the mechanical license than do the songwriters and composers. In other words, the focus was on the relevance of the wholesale market for CDs and cassette tapes. Indeed, the Librarian specifically criticized the RIAA offering for failing to ''explain why the relative value of the mechanical license to the various owners and users has any application to the determination of the value of digital performance in sound recordings.'' *1998 PSS Rate Determination* at 63 FR 25405.

programming attracted to Sirius. Using the results of a survey undertaken by Dr. Wind that purports to show that 56% of all Sirius' subscriber revenues would be lost if it offered no music channels, Dr. Pelcovits then concludes that just as Howard Stern is paid 50% of the revenues for the customers attributed to him, the music input should likewise be paid 50% of the revenues for the 56% of SDARS customers attributed to it. Subtracting the music publishers' royalty and the SDARS' internal production costs for music channels, Dr. Pelcovits is left with a bottom line royalty of 23% for sound recordings. We find this analysis suffers from several serious shortcomings.

First, Dr. Pelcovits' assertion that ''different kinds of content are substitutable inputs'' (see Pelcovits WDT at 10) is questionable in light of the fact that both inputs are required to produce the SDARS primary offering—a joint music-nonmusic consumer service. As currently constituted in this joint offering, these two types of different content, by definition, may well be classified as complementary (e.g., similar to the joint requirement for a fishing rod and a fishing reel in order to engage in the activity of fishing). No substantial evidence regarding the relevant cross-price elasticities of demand was presented by Dr. Pelcovits to support his assertion that music programming and nonmusic programming are substitutes *as currently utilized by the SDARS.*[28] Indeed, Dr. Pelcovits recognizes this *complementary* aspect of the various programming inputs when he declares, with respect to the current Sirius service, that ''a large catalog of music is *essential* to a music-based service and attracts customers to Sirius *just as* Stern attracts customers.'' Pelcovits WDT at 13 (emphasis added).

Second, Dr. Pelcovits makes several unjustifiable leaps in his analysis. He asserts that since Sirius paid 50% of revenues for each incremental subscriber that Stern's programming attracted to Sirius, the same 50% figure ''ought to apply equally to music content as to Stern'' without performing any comparable *incremental* revenue analysis for music programming. Pelcovits WDT at 13. Given the weaknesses of the 50% calculation for Stern, his assertion without any attempted analysis of the same 50% figure for music content requires a leap of faith that appears unjustified.[29] Dr. Pelcovits then multiplies the 50% Stern figure by 56% of all customers purportedly attracted to music so as to determine the ''share of the customer base that can be attributed to sound recordings in the same sense'' that Stern's *incremental* customers are attributed to Stern. Pelcovits WDT at 13. But this latter calculation has little to do with determining *incremental* subscriber revenue. For example, Dr. Wind's survey findings do not satisfactorily meet the needs of the theory espoused by Dr. Pelcovits because, as noted by Dr. Noll, ''The survey methods for determining the importance of music to SDARS penetration are not designed to answer the pertinent question, which is the *incremental* value of music, holding constant the features of the service, including the quantity of music that is now available.'' Noll WRT at 69. (*See also* Noll WRT at 10–11). Thus, even assuming Dr. Wind's survey were without faults, that survey says little about *incremental* subscribers, but rather tries to assess the consumer preferences of all Sirius subscribers or the average Sirius subscriber. By comparing the incremental revenues attributable to Stern and the overall revenues arguably attributable to music programming in order to solve for the unknown price of the music input, Dr. Pelcovits effectively ignores the marginal or incremental nature of the concept he seeks to employ.[30] Even Dr. Pelcovits' estimate of the total revenues attributable to the music input is based on a single imperfect snapshot of consumer preferences provided by Dr. Wind[31] at one point in time, without any justification for the implied assumption that such preferences have remained or will remain stable across Sirius' subscribership over time or even over any limited relevant time period.

Third, and most importantly, inasmuch as Dr. Pelcovits offers the Stern analysis as a ''benchmark,'' he assumes a degree of marketplace comparability that the evidence in this proceeding does not support. The sellers of the respective inputs are different.[32] There is a single purchaser of the ''exclusive'' Stern content from among the SDARS (i.e. Sirius), while both SDARS are buyers of the same music content. The way the inputs are used in the ultimate consumer offering results in different revenue generating capabilities for the respective inputs. For example, the Stern content can generate revenue through increased subscriptions as well as through increased advertising, while the chief characteristic of the music input on the SDARS is that it is commercial-free. Then too, there are other benefits associated with specific nonmusic content like the Stern content, such as the right to associate the service with the content provider's brand, that makes those inputs differentiable from the music input in terms of the breadth of intellectual property rights provided or the nature of the input provided. SDARS RFF at ¶ 286. In other words, all ''content'' is not comparable, any more than all inputs in addition to that content are comparable just because they share the ultimate purpose of generating revenue for the SDARS.

Fourth, to the extent that Dr. Pelcovits treats advertising revenues as part of incremental revenues attributable to Howard Stern (Pelcovits Amended WDT at 6), his use of the result as a benchmark for pricing commercial-free content inappropriately assumes an undemonstrated incremental revenue impact for the music input from advertising. SoundExchange's argument that ''to the extent that music grows the subscriber base, and those subscribers

[28] A positive cross-price elasticity of demand for music programming associated with an increase in the price of nonmusic programming would indicate that the two inputs were substitutes, while a negative cross-price elasticity of demand under the same circumstances would indicate that the two inputs were complements.

[29] This 50% estimate was originally based on analyst projections of 1.75 million incremental subscribers. A subsequent 50% estimate was based on the 2 million incremental subscribers that Dr. Pelcovits said Sirius contemplated Stern would generate by the end of 2007. Pelcovits Amended WDT at 6–8. In his amended estimates, using the original 1.75 million incremental subscribers reduces the Stern cost as a percent of incremental revenue to 49%. Dr. Pelcovits further offered estimates for 1, 2, 3 or 4 million subscribers (79%, 50%, 39% and 34% respectively) as well as an average percentage of 49% taking into account each of the four amounts of incremental subscribers. Pelcovits Amended WDT at 7–8. Incredulously, even though he offers no apparent reason for looking at one of these estimates (the 3 million incremental subscriber case) or for suggesting that it might reflect actual experience in some way, Dr. Pelcovits includes it in his ''average'' and describes the resulting average as ''reasonable.'' Pelcovits Amended WDT at 8 n.20. To the contrary, Dr. Pelcovits' various alternative estimates simply underscore the lack of a solid foundation, in fact or in theory, for his estimates and, therefore, undermine their reasonableness.

[30] Indeed, it is questionable as to whether the marginal analysis Dr. Pelcovits seeks to apply to the Stern content makes good sense given that the acquisition of Stern was a ''lumpy'' purchase that inhibits small incremental adjustments. Woodbury WRT at 41.

[31] Because nonmusic content is broken down into a number of non-additive sub-categories, while music content is not, Dr. Wind asks consumers to compare music not relative to nonmusic content, but rather to compare music to each of news, sports and talk and entertainment programming separately. These survey results therefore cannot be properly interpreted as if music as a generic category were being compared to nonmusic as a generic category.

[32] In addition, because Stern is a single seller in the market for his content, he arguably functions as a monopolist in the market for his service whereas the sellers of the music inputs are more numerous.

listen to non-music channels as well as music channels, the larger base of potential listeners helps attract advertisers'' (*see* SX RFF at ¶ 464) mistakenly attempts to equate an actual, measurable direct or primary effect associated with the Stern content to a possible, though a largely unsupported and uncalculated indirect or secondary effect which SoundExchange attributes to music. There is no dispute that the Stern content, as is the case with other nonmusic content used by the SDARS, is specifically utilized in conjunction with advertising, while the music content used by the SDARS is specifically touted to emphasize the commercial-free nature of the offering.

Finally, Dr. Pelcovits' estimates of subscribers drawn to Sirius by the Stern deal do not inspire great confidence. Other conflicting evidence concerning estimates of the additional subscribers likely to flow from the Stern deal have been identified in the record. SDARS RFF at ¶¶ 392–393.

For all these reasons, we find the proposed Stern content benchmark to be a poor starting point for the 801(b) analysis that must be undertaken in this proceeding.

ii. The Nonmusic Content Benchmark

Many of the shortcomings that apply to the Stern benchmark, similarly apply to Dr. Pelcovits' consideration of other nonmusic content deals as benchmarks. Here again, Dr. Pelcovits does not satisfy his theoretical claims that music programming and these other types of content are substitutes in the primary product offering of the SDARS. Most importantly, the key characteristic of a good benchmark—comparability—is not present. The sellers are different, the buyers are only the same in the aggregate and the nature of the inputs offered vary substantially.

Then too, Dr. Pelcovits abandons the economic rationale that he claimed served to undergird his Stern analysis: ''Absent data for other content deals, I was unable to reliably perform similar analyses of other individual deals relating the amount paid to the content provider to the expected number of incremental subscribers.'' Pelcovits Amended WDT at 9. Undeterred, Dr. Pelcovits claims that it is sufficient to simply calculate the total expenditure of the SDARS on nonmusic content as a proportion of total SDARS revenues in order to determine the appropriate revenue-based rate to use as a benchmark for the music input. We find Dr. Pelcovits' analysis and the resulting recommended ''benchmark'' of 18.6% particularly unpersuasive. Certainly, confidence in the reliability of the benchmark is hardly enhanced by the fact that it reflects two widely disparate estimates for each of the two SDARS.[33]

In short, we find Dr. Pelcovits' proposed rates based on nonmusic content to poorly meet the needs of a reliable benchmark. Even before subjecting it to any 801(b) analysis, SoundExchange admits this benchmark is significantly lower if the same analysis is applied to data projections for the years 2006 through 2012 instead of just actual data from 2006. SX RFF at ¶ 461. Even if the benchmark did not suffer from all the shortcomings identified hereinabove, such a large degree of sensitivity does not inspire confidence in using this proposed benchmark as a starting point for our analysis.

iii. Division of Surplus Analysis

In addition to his two proferred nonmusic content benchmarks, Dr. Pelcovits undertakes an additional analysis that purports to divide the SDARS ''surplus'' or residual revenues (revenues net of noncontent costs including capital costs) between the SDARS, music content providers and nonmusic content providers. We find that this analysis relies on unsupported assumptions about market behavior. For example, Dr. Pelcovits argues that all content costs must be part of his surplus pot because that is how negotiations take place ''in the real world.'' Pelcovits WDT at 16. No evidence from this market was provided to support this assumption. Despite this assumption, Dr. Pelcovits omits musical works royalty costs from his surplus pot. Pelcovits WDT at 16 n.15. Thus his inclusion of nonmusic content costs into his surplus pot appears to be little more than a transparent attempt to enlarge the surplus that is potentially available for distribution to owners of sound recordings. Although Dr. Pelcovits later claims to amend his results by ''excluding these royalties and then pay this same amount off the top out of the surplus assigned to music,'' this adjustment still treats the music publishers' costs as predetermined, rather than adding the publishers as the players to the game who also share in the surplus. Dr. Pelcovits offers no sound basis for distinguishing between his treatment of nonmusic content costs and musical works content costs or, for that matter, for treating other variable inputs as predetermined costs as well. As Dr. Noll points out, this disparate treatment of SDARS inputs may well bias the Shapley values in favor of the record labels. Noll WRT at 89.

Other assumptions underlying Dr. Pelcovits' analysis are also not solidly supported. For example, Dr. Pelcovits relies on Mr. Butson's revenue and cost estimates for XM and Sirius in 2012, despite the well-known fact that financial projections of the kind undertaken by Mr. Butson increase in uncertainty over the course of the period projected, with the last year in a six-year period of projections (in this case, 2012) being the least reliable. SDARS PFF at ¶ 960. Mr. Butson's projections in turn rest on a number of growth assumptions that either merely track past experience at best or are arbitrary at worst, leading us to question the degree to which such data is reliable for the purpose employed by Dr. Pelcovits. Different assumptions would provide different bottom-line numbers in Dr. Pelcovits' analysis.

After estimating the available ''surplus'' in 2012, Dr. Pelcovits proceeds to use a Shapley model of a cooperative game to divide the ''surplus'' among the various inputs. But a cooperative game solution to a bargaining problem assumes that an agreement between the parties is both possible and enforceable. Here there is no enforcement mechanism. 7/9/07 Tr. 303 (Pelcovits); Noll WRT at 83. Therefore, the outcomes of the model cannot be supported. At the same time, no reason is provided by Dr. Pelcovits as to why each participant in the game should not make its decisions independently to maximize their own profits. In other words, a non-cooperative game approach may have been more appropriate under the circumstances.

In short, questionable assumptions coupled with concerns over the reliability of the data used in the Pelcovits analysis cause us to regard the findings of the Pelcovits analysis as carrying little weight. For those reasons, the Judges find that the Pelcovits surplus analysis neither serves to provide a solid market rate estimate to serve as a starting point for the application of the 801(b) considerations nor to provide additional solid corroboration of SoundExchange's various benchmark analyses.

c. The Ordover Benchmarks

Although Dr. Ordover recognizes that no benchmark is perfect, he offers two categories of benchmarks for the Judges' consideration: (1) satellite TV deals with nonmusic content providers that yield

[33] Looking at each of the SDARS individually, Dr. Pelcovits calculates that XM's nonmusic content providers were paid 16.9% of revenues in 2006 while Sirius' nonmusic content providers were paid 33.2% of revenues in 2006. Pelcovits Amended WDT at 10.

two benchmarks, 40% of gross revenues based on overall content or 49.3% of gross revenues based on premium network programming, subject to certain adjustments which would reduce the effective rate for the SDARS to 18.5% or 23.5% of gross revenues (Ordover WDT at 40–41); and (2) a variety of agreements covering other distribution channels for digital music (e.g., interactive subscription services, cellular ringtones, etc.) that suggest a benchmark of 35% to 50% of revenues, subject to only an adjustment for the lower proportion of music content on the SDARS that would result in a benchmark royalty rate of 19% to 28% or, if adjusted to account for other differences between the benchmark market and the target SDARS market, would yield a royalty rate of $2.51 to $3.09 per subscriber per month (Ordover WDT at 50–52).

We find the first of these two categories of proferred benchmarks to be of little value. Even assuming that the SDARS have similar cost structures to satellite TV (also known as Direct Broadcast Satellite or DBS) operators, they offer very different consumer products, the inputs focused on in the analysis (nonmusic audiovisual content) differ substantially from the sound recording inputs at issue in this proceeding, and the buyers and sellers are different in the benchmark market as compared to the target market. The fact that these different enterprises may exhibit some similarities with respect to their capital structure and that both are subscription services offering entertainment in a broad sense is not sufficient to overcome all the aforementioned fundamental differences between the proposed benchmark market and the target market.

However, we find Dr. Ordover's second category of proferred benchmarks—certain channels for the distribution of digital music—more useful. In particular, the interactive subscription market is a benchmark with characteristics reasonably comparable to the non-interactive SDARS, particularly after Dr. Ordover's reasonable adjustment for the difference in interactivity. Both markets have similar sellers and a similar set of rights to be licensed. While the buyers may be different entities, there is no persuasive evidence that the buyers in the target market have less relative market power than the buyers in the benchmark market. Both markets are input markets and demand for these inputs is driven by or derived from the ultimate consumer markets in which these inputs are put to use. In these ultimate consumer markets, music is delivered to consumers in a similar fashion and consumers pay a monthly subscription fee for access irrespective of the hours of programming accessed. However, in the interactive case, the choice of music actually delivered is usually influenced by the ultimate consumer, while in the non-interactive case of the SDARS the consumer usually plays a more passive role limited to selecting a particular channel of music programming. Ordover WDT at 47–48. But this difference is reasonably accounted for in Dr. Ordover's interactivity adjusted per subscriber rates. In order to make the benchmark interactive market more comparable to a non-interactive service like the SDARS, Dr. Ordover adjusts the benchmark by the differential value associated with the interactivity characteristic. Ordover WDT at 47–52. This adjustment by itself suggests a rate of $1.40 per subscriber per month (i.e. $7.50 per subscriber per month multiplied by an interactivity adjustment factor of .0015/.008). Using Dr. Ordover's assumption that the average monthly per subscriber price for satellite radio is $11.25, the interactivity adjusted benchmark of $1.40 per subscriber per month is the equivalent of 13% on a percentage of subscriber revenue basis.[34] While we agree with Dr. Ordover, that but for the lack of extensive data, these calculations might well be improved through a hedonic regression analysis, nevertheless we find that, based on the available data in the record, this interactivity adjusted benchmark is a reasonable estimate of a marketplace derived benchmark.[35]

At the same time, we find that any rate derived from the higher digital distribution channel benchmarks offered in evidence lie outside the zone of reasonableness because they either: (1) Fail to account for key differences that consumers value or (2) propose other adjustments not well supported by the evidence. For example, Dr. Ordover himself proposes an additional upward ''immediacy'' adjustment to the interactivity adjusted digital subscription rate calculated above that would raise it from $1.40 per subscriber per month to $2.51 per subscriber per month. Ordover WDT at 49–50. However, we find that the ''immediacy'' adjustment is not well founded in that it: (1) Unrealistically treats all computers as stationary devices always necessitating a two-step accessibility process involving downloading music to a computer and uploading therefrom to a separate portable device in order to move the music listening experience to another physical location (i.e., widely available technology allows portable computers not only to be moved to other physical locations but also to access the internet wirelessly); and (2) appears to overstate the significance of the delay involved in listening to music because of the process of downloading to a computer and uploading therefrom to a separate portable device (i.e., the consumer may have previously downloaded the music that he may want to listen to at any point in time so that the download process does not have to be repeated every time the consumer wants to listen to music). Moreover, Dr. Ordover admits that, in light of the trend of more recent agreements, it is possible that the basis for his ''immediacy'' adjustment has all but disappeared as indicated by a ratio approaching unity. 6/21/07 Tr. 186:20–187:8 (Ordover).

In sum, while some aspects of the Ordover analysis may not be persuasive, the Judges find that these critiques are not sufficient to undermine the basic thrust and conclusions of the Ordover analysis that the interactive subscription market is a benchmark with characteristics reasonably similar to the non-interactive SDARS, particularly after Dr. Ordover's reasonable adjustment for the difference in interactivity. As noted hereinabove, we equate the resulting benchmark offered by Dr. Ordover to be the equivalent of 13% stated as a percentage of revenue.

[34] Because of the commercial-free character of music programming on the SDARS, subscription revenues attributable to music programming are the appropriate focus of this analysis.

[35] SoundExchange's argument that this interactivity adjustment needs to be adjusted further by differences in the intensity of use is not adequately supported by the record. Dr. Ordover admitted that the information he would have to rely on to make such an adjustment was ''imparted to me by counsel'' and that he ''did not have a direct conversation with the people who delivered the information'' and that he ''did not file a calculation that would reflect that adjustment'' (i.e. he made no adjustment to his proposed rates based on this information regarding intensity of use). *8/27/07* Tr. 102:11–12; 108:7–109:18 (Ordover). Moreover, Mr. Eisenberg's testimony cited by SoundExchange to support higher intensity of usage ambiguously refers to ''historical'' data from an unknown period which may or may not coincide with the period analyzed by Dr. Ordover in making his initial interactivity adjustment. Eisenberg WDT at 19. At the same time, the SDARS' argument that Dr. Ordover's interactivity adjustment is fatally compromised by the absence of this additional intensity adjustment is equally without merit. The absence of the unsupported additional ''intensity'' adjustment does not negate the reasonableness of Dr. Ordover's interactivity adjustment based on the record of evidence before us. The SDARS' separate argument that Dr. Ordover's video-service interactivity adjustment needs to be adjusted to reflect a substantially higher value for interactivity, as shown by a few recent audio agreements covering interactive as well as noninteractive services, is not supported by a close reading of the relevant provisions of those agreements. SX PFF at ¶ 481–486.

We find that some of the additional relevant evidence from the marketplace for other types of digital music services corroborates Dr. Ordover's analysis by showing that, for many types of music services, a substantial portion of revenue is paid to sound recording copyright owners above the current SDARS rate, just as it would be pursuant to the 13% rate that would result from Dr. Ordover's interactivity adjusted interactive subscription market analysis. In other words, we find these additional voluntary agreements covering such digital services as clip licenses, permanent audio downloads, etc. of some general corroborative value. These data show that, in many cases, the price paid by buyers for the rights to utilize a sound recording in various ways is as much as or higher than the 13% rate suggested hereinabove. This shows that the prevailing rates in these other markets do not appear to undermine his analysis—some indication of general reasonableness. However, because no effort is made to reconcile the many differences in product characteristics that may exist between these markets and the target SDARS market and adjust for such differences, these alternatives must be regarded as having only directional value and to lie outside the zone of reasonableness (i.e. a zone that excludes clearly noncomparable market situations). In other words, based on the record of this proceeding, the 13% rate identified hereinabove marks the upper boundary for a zone of reasonableness for potential marketplace benchmarks from which to identify a rate that satisfies any 801(b) policy considerations not adequately addressed in the market.

3. The Zone of Reasonableness and the 801(b) Policy Considerations

The marketplace evidence offered by the SDARS and SoundExchange supports the determination of the parameters of a zone of reasonableness. Based on the record of evidence in this proceeding we have determined that the 13% rate identified hereinabove marks the upper boundary for a zone of reasonableness for potential marketplace benchmarks. We have also determined that potential marketplace benchmarks cannot be less than or equal to the SDARS' musical works rates (i.e., 2.35% of gross revenues). However, the latter lower boundary for the zone of reasonableness is not the equivalent of the upper boundary in offering a specific benchmark defined by comparability. Therefore, based strictly on marketplace evidence, a rate close to the upper boundary is more strongly supported than one close to the lower boundary. We now turn to the 801(b) policy considerations to determine the extent to which those policy considerations weigh in the same direction or a different direction as the benchmark market evidence hereinbefore reviewed.

The relevant 801(b) factors meriting further consideration consist of the following four specific policy objectives: (A) To maximize the availability of creative works to the public; (B) to afford the copyright owner a fair return for his creative work and the copyright user a fair income under existing economic conditions; (C) to reflect the relative roles of the copyright owner and the copyright user in the product made available to the public with respect to relative creative contribution, technological contribution, capital investment, cost, risk, and contribution to the opening of new markets for creative expression and media for their communication; and (D) to minimize any disruptive impact on the structure of the industries involved and on generally prevailing industry practices. 17 U.S.C. 114(f)(1)(B) and 17 U.S.C. 801(b)(1). Not surprisingly, both the SDARS and SoundExchange have a different view of how specific facts weigh in their favor on each of these policy objectives. We reject the notion, however, that Section 801(b)(1) is a beauty pageant where each factor is a stage of competition to be evaluated individually to determine the stage winner and the results aggregated to determine an overall winner. Neither the Copyright Royalty Tribunal nor the Librarian of Congress adopted such an approach. *See* 46 FR 884 (January 5, 1981) (jukebox proceeding); 46 FR 10466 (February 3, 1981) (mechanical license proceeding); 63 FR 25394 (May 8, 1998) (PSS proceeding). Rather, the issue at hand is whether these policy objectives weigh in favor of divergence from the results indicated by the benchmark marketplace evidence. Therefore, we next evaluate the other evidence in the record offered with respect to the four policy considerations to determine if that evidence shows that the weight of marketplace evidence we have previously reviewed requires any adjustment.

a. Maximizing the Availability of Creative Works to the Public

While the SDARS and SoundExchange offer various arguments to suggest that they are each respectively the largest contributor toward the achievement of this policy objective, those arguments miss the mark. The ultimate question is whether it is necessary to adjust the result indicated by marketplace evidence in order to achieve this policy objective. We agree with Dr. Ordover that ''voluntary transactions between buyers and sellers as mediated by the market are the most effective way to implement efficient allocations of societal resources.'' Ordover WDT at 11. An effective market assures absence of both below-market prices and supra-competitive prices, so that suppliers will not reduce output and innovation in response to the former and consumers will not experience a reduction in consumer welfare in response to the latter. In other words, an effective market determines the maximum amount of product availability consistent with the efficient use of resources.

The parties to this proceeding choose to emphasize only one or two aspects of these supply and demand dynamics because doing so appears to facially support a ''win'' for them on the availability factor. The SDARS, for example, choose to emphasize that they foster the availability of music: (1) by assuring that different types of music are more widely disseminated than they are in the terrestrial radio alternative and (2) by the promotional effect of their airplay. Therefore, their view is that the availability of works to the public is maximized if the rates are as low as possible. *See* SDARS PFF at ¶¶ 126–147; Woodbury Amended WDT at 43–44; Noll WRT at 41. On the other hand, SoundExchange focuses on the input suppliers' incentive to increase creative output, arguing that the recording industry requires higher revenues from alternative distribution mechanisms to compensate for a drop in the physical sales of CDs generally and higher revenues from the SDARS specifically to compensate for the substitution of SDARS listening for physical CD sales. Therefore, its view is that the availability of works to the public can only be maximized through higher rates. *See* SX PFF at ¶¶ 781–93, ¶¶ 811–12, ¶¶ 669–710.

We find that the record does not support any adjustment from the result indicated by the previously reviewed marketplace evidence in order to achieve the policy objective of maximizing the availability of creative works. For example, the evidence presented by the SDARS and SoundExchange is insufficient to suggest a net substitution/promotion difference between the interactive subscription service benchmark and the SDARS marketplace. Because only the relative difference between the benchmark market and the hypothetical

target market would necessitate an adjustment, the absence of solid empirical evidence of such a difference obviates the need for such further adjustment.

Furthermore, even if the absolute levels of promotion/substitution in the SDARS market alone were somehow relevant, as the parties appear to suggest, we find that they presented no acceptable empirical basis for quantifying promotion/substitution for purposes of adjusting rates. For example, the SDARS assert that their service is promotional and imply that they should receive credit for this effect. But they present no persuasive evidence that would be useful for quantifying the magnitude of this asserted effect or for deriving a method for translating such magnitudes into a rate adjustment. The mere assertion that airplay is promotional without more is insufficient. Indeed, the quality of evidence presented by the services on this issue consisted largely of such assertions (e.g., Woodbury Amended WDT at 44–46), a handful of consumer testimonial e-mails or anecdotes recounting subjective opinions. *See* SX PFF at ¶¶ 714, 717.

SoundExchange, in an effort to support and quantify its claimed substitution effect, offers the results of several consumer surveys. Dr. Pelcovits concludes that these surveys show that SDARS subscribers will reduce their purchases of CDs by 2.6 CDs per subscriber per year. *See* Pelcovits WRT at 31–33. But the Wind survey on which Dr. Pelcovits partially relies in reaching his conclusion was excluded by the Judges in their gatekeeping roles (applying Federal Rule of Evidence 702), because of data shortcomings and questions about the reliability of the methods employed by Dr. Wind in that survey. 8/29/07 Tr. 114:2–115:2. Dr. Pelcovits' partial reliance on the marketing survey research offered by Mr. Mantis is similarly misplaced because the weight of the survey's results are questionable in light of: (1) The lack of a control group where the purpose of the survey is to establish causality; (2) the potential bias introduced by the leading character of important questions in the survey; (3) an inability to specifically attribute all of the claimed substitution effect to the SDARS music programming as opposed to the SDARS nonmusic programming; and (4) the lack of time period specificity in asking about consumer behaviors. SDARS PFF at ¶¶ 247–257, 258–261, 263. Dr. Pelcovits' reliance on the National Association of Recording Merchants (''NARM'') survey does not aid his calculation of the magnitude of the substitution effect because, even construing the evidence in a light most favorable to SoundExchange, it indicates the percentage of satellite radio subscribers who purchased no music in the last year. That is, the NARM study may suggest a substitution effect but does not attempt to quantify it.[36]

Thus, on the evidence before us we find the net impact of the claimed substitution and promotion effect of the SDARS on CD sales is indeterminate. More importantly, we find that little if any of this evidence sheds light on the question of whether the net substitution/promotion effect of the SDARS is different from the net substitution/promotion effect of the interactive subscription service benchmark.

Finding no conclusive quantifiable evidence of such a substitution/promotion difference between the benchmark market and the target market and, further, finding no quantifiable difference suggested by the parties with respect to the remaining evidence submitted on the first policy factor discussed hereinabove, we conclude that, in the instant case, the policy goal of maximizing the availability of creative works to the public is reflected in the market solution embodied in the benchmark market rates. An effective market would have taken into account substitution concerns and promotion effects in determining the maximum amount of product availability consistent with the efficient use of resources.

b. Fair Return to Copyright Owner and Fair Income to Copyright User

Here, too, the SDARS and SoundExchange offer various arguments to suggest that they should each be the largest beneficiary of this policy objective and, again, those arguments miss the mark. The ultimate question is whether it is necessary to adjust the result indicated by marketplace evidence in order to achieve this policy objective and, if so, is there sufficient evidence available to do so.

We find that the evidence in the record supports no such adjustment. The SDARS have not shown that their income under existing economic conditions is unfairly constrained by adoption of a rate informed by the marketplace evidence we have previously reviewed. Nor has SoundExchange shown that the copyright owners will fail to receive a fair return for their creative work because of the adoption of a rate informed by the marketplace evidence we have previously reviewed.

The SDARS argue that a fair income to the copyright user is one which is sufficient to generate a competitive risk-adjusted return on past and future investments. *See* SDARS PFF at ¶ 179. But the SDARS conveniently ignore the highly leveraged structure of their enterprises and imply that such a return should occur within the license term and, further, that such a return should be at least one that consists of net income in the form of profits. *See* SDARS PFF at ¶¶ 178, 186. Affording copyright users a fair income is not the same thing as guaranteeing them a profit in excess of the fair expectations[37] of a highly leveraged enterprise. Nor is a fair income one which allows the SDARS to utilize its other resources inefficiently. In both these senses, a fair income is more consistent with reasonable market outcomes. Therefore, in the absence of any substantial evidence in the record to the contrary, we find that it is not necessary to adjust the benchmark rate hereinbefore indicated by marketplace evidence in order to achieve the policy objective of affording copyright users a fair income. For example, there is no substantial evidence of the exercise of unfair market power in the setting of prices in the benchmark marketplace.

This is not to say that SDARS' concerns with respect to meeting their cash flow and income goals sooner rather than later should not be considered in this proceeding, but rather we find that they are more properly raised when the SDARS more directly address the timing issue and its impact in the context of the fourth policy objective articulated in the statute (i.e., minimizing any disruptive impact on the structure of the industries involved).

With respect to the second policy objective, SoundExchange primarily points to the voluntary agreements negotiated with other digital services in the market for sound recordings as representing a fair return for copyright owners. However, SoundExchange suggests that if the application of the

[36] SoundExchange also argues that the SDARS' own listening research suggests a substitution effect. Again, even construing the evidence in a light most favorable to SoundExchange, the SDARS' internal research merely provides general evidence of a substitution effect rather than a specific quantifiable magnitude.

[37] The SDARS readily admit that any projections, particularly in this relatively new industry, are subject to substantial uncertainty especially towards the latter part of the license period. Frear WRT at ¶¶ 13–14. Therefore, the fair earnings expectations of a highly leveraged enterprise must reasonably carry a somewhat wider ambit than various projections offered into evidence by the contending parties.

four policy objectives produces a below-market rate, then a fair return would not be achieved because that below-market rate would result in the record industry not earning sufficient royalties to compensate for the substitution effect the SDARS have on revenues from the sales of other forms of music. *See* SX PFF at ¶ 834. Because we have previously addressed SoundExchange's market-based evidence, *supra* at Section IV.C.2.b.–c., we need not address the specifics of that evidence again here. Similarly, we have previously addressed SoundExchange's evidence with respect to substitution of the SDARS for CD sales, *supra* at Section IV.C.3.a., where we found the net impact of the claimed substitution and promotion effect of the SDARS on CD sales was indeterminate. We further note that additional SoundExchange claims regarding a broader view of substitution (i.e. an SDARS substitutional effect on the sales of music in forms other than CDs) are neither adequately supported nor quantified in the record. In short, based on the evidence before us, we find that it is not necessary to adjust the benchmark previously indicated by marketplace evidence in order to achieve the policy objective of affording copyright owners a fair return.

c. Relative Roles of the Copyright Owner and the Copyright User in the Product Made Available to the Public With Respect to Relative Creative Contribution, Technological Contribution, Capital Investment, Cost, Risk, and Contribution to the Opening of New Markets for Creative Expression and Media for Their Communication

The SDARS, in effect, argue that the third 801(b) policy objective requires a discounted market rate in consideration of their: (1) Creative contributions to developing and airing nonmusic programming, (2) creative contributions to music channels, (3) contributions in the form of the design and development of new technology, (4) substantial capital investments and operating costs, (5) contribution towards meeting various risks associated with making their product available to the public, and (6) contribution to opening new markets for creative expression and media for their communication. Not surprisingly, SoundExchange argues that record companies and artists make equally important contributions to the achievement of this third policy objective when these various sub-factors are considered as a whole and, further, that these various sub-factors are adequately considered and valued in market transactions. We find that, considering the record of relevant evidence as a whole, the various sub-factors identified in this policy objective may weigh in favor of a discount from the market rate because of the SDARS' demonstrated need to continue to make substantial new investments to support the satellite technology necessary to continue to provide this specific service during the relevant license period. However, inasmuch as we find this issue is intimately intertwined with evidence impacting our consideration of the fourth 801(b) policy objective (i.e., minimizing any disruptive impact on the structure of the industries involved), we will treat the effect of this particular matter as part of our consideration of the fourth policy objective. *See infra* at Section IV.C.3.d.

We come to this conclusion in a straightforward manner from the evidence offered regarding the third policy consideration. The SDARS' attempt to obtain credit for creative contributions largely centers on: (1) Enhancements to the channels described as music channels and (2) their acquisition of nonmusic programming as part of their product offering. The SDARS' reliance on the Librarian's decision in the *1998 PSS Rate Determination* at 63 FR 25405 which stated that the ''product made available'' is the ''entire digital music service'' of which sound recordings are an element is misplaced where the SDARS seek to gain credit towards a discounted royalty rate for music by pointing to their creative addition of nonmusic programming to the digital music offering. The Librarian was clearly considering a music-only service in the *1998 PSS Rate Determination* and nowhere in that decision suggests that such nonmusic content considerations are relevant. SX PCL at ¶¶ 84–85. While the SDARS' creative contributions to music channels may be relevant, it is certainly subsidiary to and dependent on the creative contributions of the record companies and artists to the making of the sound recordings that are the primary focus of those music channels.[38] Herscovici WRT at 23–24. However, our inquiry does not end here. We find that, notwithstanding this imbalance in relative creative contributions, there is nothing that distinguishes this result from the benchmark marketplace that requires an adjustment in order to achieve the third policy objective.

With respect to technological contributions, capital investment, cost, risk and the opening of new markets, the SDARS' claims are overstated regarding their relative contributions to the relevant product made available to the public. For example, the SDARS' claimed technological contributions take credit for not only their own efforts but also for the substantial technological contributions of others. Elbert WRT at 20–40. At the same time, capital investment expense, other costs, and risk incurred by copyright owners are dismissed by the SDARS because they are not ''incremental'' with respect to satellite radio (Woodbury Amended WDT at 50); but this ignores the fact that record companies undertake ''significant and irreversible investments to develop talent and produce new works and in order to maximize their incentives to do so, it is important to receive from each distribution channel revenues that reflect the value of their contributions.'' Ordover WRT at 14. Thus, contrary to the overstated claims of the SDARS, with respect to most such investments, costs and risks, there is little to distinguish their relative contribution in this market from those of other digital music distributors in their markets.[39] [40] Moreover, over time, the relative position of the SDARS may have improved compared to the relative position of the record companies. Herscovici WRT at 24–25, 29.

However, the primary type of expenditure incurred by the SDARS that does distinguish them from other digital distributors of music is their expenditure for satellite technology. This type of investment spending has a useful life that typically extends beyond the limited period of a single licensing

[38] Dr. Woodbury suggests that the creative contributions of the record companies and artists are not relevant because they were not made specifically for this product offering—that is, they involved no ''incremental effort to create new music.'' Woodbury Amended WDT at 48. There is no factual basis to support the Woodbury assertion. Moreover, the owners of sound recordings clearly receive recognition for their creative contribution in the form of compensation from all of the other digital music services discussed in this proceeding even though those sound recordings were not shown to be created exclusively for those services. In other words, the Woodbury analysis is flawed because it would preclude intellectual property owners from ever being compensated for their creative efforts in this market or other similar digital markets and thereby eliminates their incentive to create and supply the very music upon which the future of this service depends as currently structured.

[39] Moreover, there is no substantial evidence to indicate that the relative capital investment, cost and risk contributions made by the SDARS as shown by the record of evidence in this proceeding were made (or are continuing to be made) to secure revenue streams limited to the license period at issue in this proceeding. The same, of course, is true for similar contributions made by the record companies.

[40] There is also little to distinguish the SDARS' relative contribution to opening new markets from those of other digital music distributors in their markets at present. SX RFF at ¶¶ 104–105.

period as currently defined by statute; therefore, all of the costs of spending on this technology cannot properly be ascribed to a single licensing period. Then, too, such technology may have a recoverable asset value even if the SDARS that made the investment ceases to operate. Herscovici WRT at 28. Nevertheless, nothing in the record of evidence before us indicates that the SDARS can continue to make their current product available to the public in the license period at issue in this proceeding without making new expenditures related to their satellite technology. Clearly, new satellite investment, unlike other costs, cannot be postponed without a serious threat of disruption to the service the SDARS provide. Although this may weigh in favor of a discount from the market rate, we find this issue is intimately intertwined with evidence impacting our consideration of the fourth 801(b) policy objective (i.e., minimizing any disruptive impact on the structure of the industries involved). Consequently, we will treat the potential disruptive effect of postponing investment in new satellite technology as part of our consideration of the fourth policy objective below. *See infra* at Section IV.C.3.d.

d. Minimizing Any Disruptive Impact on the Structure of the Industries Involved and on Generally Prevailing Industry Practices

Despite predictions of impending doom for satellite radio if excessively high rates are set in this proceeding or similar dire predictions for the record companies if exceedingly low rates are set in this proceeding, the rate set here is just one component that will impact the future of both industries. It can be disruptive, however, if it directly produces an adverse impact that is substantial, immediate and irreversible in the short-run because there is insufficient time for either the SDARS or the copyright owners to adequately adapt to the changed circumstances produced by the rate change and, as a consequence, such adverse impacts threaten the viability of the music delivery service currently offered to consumers under this license.

Economic experts for both sides agree that a royalty rate that would cause the SDARS to cease operating or dramatically change the nature of its product would clearly be disruptive. Ordover WDT at 33–34; Herscovici WRT at 31,40; 8/16/07 Tr. 70:10–72:13, 73:21–76:7 (Noll). In order to minimize the adverse impact of the rate applicable to the license here, we find it appropriate to adopt a rate from the zone of reasonableness for potential marketplace benchmarks that is lower than the upper boundary most strongly indicated by marketplace data. We do so in order to satisfy 801(b) policy considerations related to the minimization of disruption that are not adequately addressed by the benchmark market data alone. The Judges further find that over the period of time marked by the license period, the potential for disruption will diminish, allowing for some reasonable escalation of the initial rate we set herein.

Although much evidence of the respective financial conditions of the SDARS and the record companies was presented in this proceeding, we conclude that many of the claimed examples of ''disruption'' are overstated. As Dr. Herscovici points out ''simply causing an increase in costs to the Services or a decline in royalties to the record companies'' is not substantial enough to qualify as a disruptive impact. Herscovici WRT at 31. However, we are persuaded by the evidence before us that there are two circumstances faced by the SDARS that merit the adoption of a rate below the upper boundary of the zone of reasonable market rates we have identified hereinbefore (i.e., 13%).

First, given that the current rates paid by the SDARS for these inputs are in the range of 2.0% to 2.5% of revenues, an immediate increase to the upper boundary of the zone of reasonableness (i.e., 13%) would be disruptive inasmuch as the SDARS have not yet attained a sufficient subscriber base nor generated sufficient revenues to reach consistent Earnings Before Interest, Taxes, Depreciation and Amortization (''EBITDA'') profitability or positive free cash flow. For example, EBITDA profitability for Sirius is estimated by Mr. Karmazin to be consistent with revenues generated from between 10 million and 11 million subscribers. *6/7/07* Tr. 35 (Karmazin). Increasing the current royalty rates to 13% will increase costs and raise the necessary critical mass of subscribers sufficient to generate revenues that can yield EBITDA profitability or even positive free cash flow. In order not to significantly delay the attainment and amounts of EBITDA profitability and positive free cash flow, some rate within the zone of reasonableness that is less than 13% is warranted. Even SoundExchange's own proposal recognizes that immediate movement to a substantially higher market rate is potentially disruptive and seeks to minimize the possibility by requesting an initial rate of 8% that increases as subscribership increases for each of the SDARS. Moreover, while SoundExchange maintains that the proper market-based rate is 23% and it is merely proposing a phase-in of that rate, it also recognizes that various year-end 2011 consensus subscriber projections in the neighborhood of 15–16 million for each of the SDARS (See SX PFF at ¶¶ 1094, 1096) would only take the SDARS to a rate of 17% by the beginning of the last year of the license term (2012). *See* SoundExchange Third Amended Rate Proposal (August 6, 2007) at 1–8 and closing argument of SoundExchange's counsel, 10/17/07 Tr. 142 (Handzo). In short, even SoundExchange has made a market-based proposal that, barring exceptional events,[41] is adjusted to minimize disruption for the SDARS by not only delaying the application of that market-based rate but effectively discounting it throughout the relevant period of the license.

Second, as noted, *supra* at Section IV.C.3.c., we are persuaded that still another factor that requires attention is any undue constraint on the SDARS' ability to successfully undertake satellite investments planned for the license period. A failure to complete these investments as scheduled clearly raises the potential for disruption of the current consumer service.

For all these reasons, the Judges find it appropriate to adopt a rate from the zone of reasonableness for potential marketplace benchmarks that is lower than the upper boundary most strongly indicated by marketplace data. Based on the record before us, including, among other things, Mr. Butson's sensitivity analysis and testimony from the respective CFOs of the SDARS, Mr. Frear and Mr. Vendetti, a reasonable starting point for this license is a royalty rate of 6% of gross revenues as we have previously defined such revenue. *See* Butson WRT at Appendix A, B and E (suggesting that inasmuch as a 4% average rate over the period will not cause the SDARS' EBITDA profitability and positive free cash flow to be substantially impacted relative to current consensus analyst expectations and, by comparison, that a near 8% average rate over the period significantly delays the attainment and amounts of EBITDA profitability and

[41] SoundExchange argues that the proposed merger between Sirius and XM should be factored into the rate determination. But this would require us to estimate the likelihood that the merger would successfully occur, forecast the precise date when the merged entity would become a single operation, and project the likelihood, magnitude and timing of any synergistic benefits of the merger in terms of cost savings. We find on the record before us that we have been presented with insufficient evidence on these issues.

positive free cash flow for the SDARS, then an average rate somewhat less than 8% and structured to begin as high as 6% will have an impact not likely to threaten disruption); 6/6/07 Tr. 37:16–38:16 (Vendetti) (indicating that a 4% immediate rate necessitates no change in plans as contrasted to an 8% immediate rate that ''particularly impacts the amount of cash the company has to run its operation'' and therefore an 8% immediate rate adversely impacts the company ''very much'' in the short-term whereas a 6% rate has lesser impact than an 8% rate); 6/12/07 Tr. 172:1–10 (Frear) and 8/15/07 Tr. 103:15–104:12 (Frear) (sound recording royalties already budgeted in 2007 at a figure north of 4% or at 4.2%); *see also* closing argument of XM's counsel, Mr. Bruce Rich, at 10/17/07 Tr. 234:19–237:14 (indicating that an immediate rate higher than 6% is likely to give rise to planning concerns and that SDARS do not have ''absolute vision that 4½ percent wouldn't work or 5% wouldn't work''). We further find that over the passage of time the potential for disruption from the imposition of the 6% rate gradually diminishes as indicated by various forecasts showing consistent subscriber and revenue growth (See SX PFF at ¶¶ 1094, 1096), thereby allowing a reasonable escalation of the initial rate by the addition of 0.5% annually beginning with the start of the 2009 calendar year to the previous years' royalty rate.

In short, the Judges find that the percentage of gross revenues rate applicable to each year of the license for the SDARS is as follows: 6.0% for 2007, 6.0% for 2008, 6.5% for 2009, 7.0% for 2010, 7.5% for 2011, and 8.0% for 2012. We find no basis for making further adjustments to this revenue rate to reflect inflation.[42]

D. The Section 112 Royalty Rates and Minimum Fees

1. Background

Section 112(e) of the Copyright Act directs the Judges to establish rates and terms for the making of ephemeral copies of digital recordings. We are tasked with setting rates and terms that ''most clearly represent the fees that would have been negotiated in the marketplace between a willing buyer and a willing seller,'' as well as establish '' a minimum fee for each type of service offered by transmitting organizations.'' 17 U.S.C. 112(e)(4).

2. Proposals of the Parties

SoundExchange proposes combining the Section 112 and 114 rates over the license period by allocating 8.8% of the combined fee owed by the SDARS towards the Section 112 charge. SoundExchange Third Amended Rate Proposal (August 6, 2007) at 4. The SDARS also appear to believe that the fee for the Section 112 license should be combined with that for Section 114, but their fee proposal recognizes no separate value for the Section 112 license. They argue that ephemeral copies have no economic value separate from the value of the performances they effectuate, citing the Copyright Office's 2001 *DMCA Section 104 Report* in support. SDARS PFF at ¶¶ 898–899, 902; SDARS RFF at ¶ 504.

3. The Record Evidence

While the record in *Webcaster II* regarding the Section 112 license was exceedingly slim, it is virtually nonexistent in this proceeding. No party presented any evidence as to the independent value arising from the Section 112 license. SDARS PFF at ¶ 903.

4. Conclusion

Of the thousands of pages of testimony and exhibits submitted by the parties in this proceeding, virtually none of them are devoted to any discussion of the Section 112 license and ephemeral copies. It is therefore evident that the parties consider the Section 112 license to be of little value at this point in time. Nevertheless, SoundExchange asks the Copyright Royalty Judges to bless the fiction that whatever the royalty fee for the Section 114 license may be, 8.8% of that fee constitutes the value of the Section 112 license. We decline to accept SoundExchange's invitation for the same two reasons we declined to do so in *Webcaster II.*

First, the Section 112 license requires us to determine the rate or rates that would have been negotiated between a willing buyer and a willing seller, not the value that copyright owners and performers or the SDARS would have attached to ephemeral copies. SoundExchange's valuation of 8.8% is not a rate. The SDARS will not be paying 8.8% more in total royalty fees because of this valuation, nor will they be subtracting 8.8% from their charge if they choose not to avail themselves of the Section 112 license. Rather, SoundExchange's 8.8% valuation is nothing more than an effort to preserve a belief that the Section 112 license has *some* value by perpetuating the number adopted in the first webcasting proceeding. *Determination of Reasonable Rates and Terms for the Digital Performance of Sound Recordings and Ephemeral Recordings (Final Rule),* 67 FR 45240 (July 8, 2002) (codified at 37 CFR part 261) (''*Webcaster I*'').

Second, the paucity of the record prevents us from determining that 8.8% of the Section 114 royalties is either the value or the rate for the Section 112 license. SoundExchange's mere assertion that its 8.8% proposal reflects an agreement between record companies and artists on the rate applicable to Section 112 does not overcome the absence of evidence in the record with respect to this license. SoundExchange did not present any testimony or evidence from copyright owners or performers on this point.

We are left with a record that demonstrates that the license is merely an add-on to the securing of the performance rights granted by the Section 114 license. SoundExchange's proposal to include the Section 112 license within the rates set for the Section 114 license reflects this reality and we accept it as we did in *Webcaster II.* However, just as we did in *Webcaster II,* we decline, for the reasons stated above, to ascribe any particular percentage of the Section 114 royalty as representative of the value of the Section 112 license. *See Webcaster II,* 72 FR 24101–2.

V. Terms

Having determined the rates to be paid by the SDARS for their activities under Sections 114 and 112 of the Copyright Act, the Judges now turn to the terms necessary to effectuate payment and distribution. As we stated in *Webcaster II,* we are obligated to ''adopt royalty payment and distribution terms that are practical and efficient.'' 72 FR 24102. SoundExchange and the SDARS each submitted proposals of the terms they believe fulfill this obligation. SoundExchange based its proposal largely on terms the Judges adopted in *Webcaster II.* SX PFF at ¶ 1466. The terms proposed by the SDARS differ in certain respects from the *Webcaster II* terms.

In considering the parties' proposals and adopting royalty terms, we seek to maintain consistency across the licenses set forth in Sections 112 and 114. Consistency promotes efficiency thereby

[42] We do *not* find that the benchmark supports an additional Consumer Price Index adjustment to the percent of revenue rate. No showing has been made to indicate that gross revenues, as hereinbefore defined, will not maintain their real value over time—indeed, the services have increased their prices during the prior licensing periods. Moreover, no evidence has been submitted by SoundExchange, the proponent of such an adjustment, to support this additional adjustment by what is, at this point in time, an indeterminate amount.

reducing the overall costs associated with the administration of the licenses. This is not to say that the Judges will never vary terms across the licenses, but the burden is upon the parties to demonstrate the need for and the benefits of variance. As discussed below, the parties, for the most part, have not met this burden.

A. Collective

SoundExchange requests to be named the sole collective for the collection and distribution of royalties paid by the SDARS under the Section 112 and 114 licenses for the license period 2007–2012. SX PFF at ¶ 1505; Kessler WDT at 15–17. The SDARS do not oppose SoundExchange's request. SDARS RFF at ¶ 506 n.51.

We have determined previously that designation of a single Collective ''represents the most economically and administratively efficient system for collecting royalties under the blanket license framework created by the statutory licenses.'' *Webcaster II,* 72 FR 24104. No party submitted evidence that would compel us to alter that determination here. Indeed, no party requested the designation of multiple collectives, and SoundExchange was the only party requesting to be selected as a collective.[43]

SoundExchange has a track record of serving as a Collective for the collection and processing of royalty payments made under Sections 112 and 114, having done so since the inception of the statutory licenses. That coupled with the absence of any opposition or record evidence to suggest that SoundExchange should not serve in that capacity here leads us to determine that SoundExchange will serve as the Collective for the 2007–2012 license period.

We now turn to those terms which are in dispute.

B. Disputed Terms

1. Late Fees

a. Late Royalty Payments

SoundExchange requests that the Judges establish a fee for late royalty payments equal to 1.5% of the total royalty owed by the SDARS for that period. SX PFF at ¶¶ 1482, 1488, 1489; Kessler WRT at 2–4; 8/29/07 Tr. 19:15–20:5 (Kessler). The proposed fee of 1.5% is the fee that is currently paid by PSS for the license period 2002–2007 and was the fee imposed by the Judges in the recently concluded webcasting proceeding. *See* SX PFF at ¶¶ 1480–82; 8/29/07 Tr. 19:15–20:5 (Kessler).

SoundExchange argues that imposition of a ''significant'' late fee is necessary in order to compel licensees to make timely royalty payments. SX PFF at ¶ 1486; 6/19/07 Tr. 44:3–10 (Kessler). SoundExchange represents that many licensees are late with their payments, with such delinquency ranging from a few days to a few months. SX PFF at ¶ 1483. Ms. Kessler asserts that late fees are the only remedy available to SoundExchange to thwart late payments, absent filing an infringement suit. Kessler WRT at 3; 6/19/07 Tr. 44:3–10 (Kessler). Moreover, SoundExchange submits that a 1.5% late fee is not burdensome to the SDARS provided they submit their royalty payments in a timely manner. SX PFF at ¶ 1483; SX RFF at ¶ 522.

In support of its proposed fee, SoundExchange cites three marketplace agreements between record companies and digital music services that impose a late fee of 1.5%. SDARS Ex. 86 at SE–REB0025070 (sec. 7.2); SDARS Ex. 88 at SE–REB 0025912 (sec. 6.04(d)); SX Ex. 105 DR at Ex. A, sec. 5(b).

While the SDARS do not oppose the imposition of a fee for untimely royalty payments, they counter that a fee of 0.5% of the total royalty owed for the period is more reasonable and is supported by the record in this proceeding. SDARS PFF at ¶ 1311. The SDARS argue that SoundExchange's primary support for its 1.5% fee is that the Judges adopted that fee in *Webcaster II* and relies on the agreements offered in that proceeding here. *See* SDARS PFF at ¶ 1315; SDARS RFF at ¶¶ 507–09. The SDARS contend that SoundExchange has presented no other agreements in this proceeding to support its proposal. SDARS PFF at ¶ 1314. The SDARS further contend that, unlike the record in *Webcaster II,* which established that SoundExchange was faced ''with virtually hundreds of different webcasters, including some with an established poor or unknown payment history,'' the SDARS are defined entities with a history of making payments in a timely manner the majority of the time—a point conceded by SoundExchange. SDARS PFF at ¶ 1315; 6/19/07 Tr. 94:14–95:5 (Kessler) (''XM and Sirius are typically timely with their payments.''). The SDARS assert, therefore, that they need no motivation to pay timely. SDARS PFF at ¶ 1315.

The SDARS also cite the testimony of Mr. Frear who testified that most of Sirius' ''commercial agreements have no late payment charges at all. If there are late payment charges, they tend to be in the half of one percent to one percent per month range.'' 6/12/07 Tr. 24:4–8 (Frear). They state that Mr. Frear's testimony is supported by numerous SDARS agreements as well as record company agreements and amendments with digital music services in the record which contain either no late fee provision or impose a late fee of 1%. SDARS PFF at ¶ 1312, citing SIR Exs. 43, 52–53; SDARS Ex. 85 at SE–REB 0027789; SDARS Ex. 87 at SE–REB 0028157; SX Ex. 104 DR at 23; SX Ex. 256 RR.at SE 0000626; SX Ex. 257 RR at SE 000148; SE Ex. 258 RR at SE 0005331–32; SX Ex. 253 RR; SX Ex. 254 RR. The SDARS claim that SoundExchange's proposal of a 1.5% late fee is ''the rare and extreme upper bound of marketplace fees, [whereas] the norm is no late fee at all,'' thus making the SDARS' proposal of 0.5% ''far more consistent with the record evidence * * * particularly in light of [their] established record of timeliness.'' SDARS RFF at ¶ 510.

In determining an appropriate late fee, a balance must be struck between providing an effective incentive to the licensee to make payments timely on the one hand and not making the fee so high that it is punitive on the other hand. As we did in *Webcaster II,* the Judges conclude that a fee of 1.5% for untimely payments strikes the proper balance. Even though the SDARS typically submit their payments in a timely manner (SDARS PFF at ¶ 1309; 6/19/07 Tr. 94:14–95:5 (Kessler)), the SDARS' payment history is not dispositive. We are not persuaded that a late fee of 0.5% per month provides a sufficient incentive. While the content agreements and record company agreements cited by the SDARS do not contain a late fee provision, these agreements do contain provisions allowing for the termination of the agreement in the event of a breach of the agreement such as failure to make payments timely. SIR Ex. 43, sec. 12.4(a); SDARS Ex. 85 at SE–REB 0027790 (sec. 8(b)); SDARS Ex. 86 at SE–REB 0025071 (sec. 12); SDARS Ex. 87 at SE–REB 0028160 (sec. 10(b)); SDARS Ex. 88 at SE–REB 0025917 (sec. 10.01); SX Ex. 104 DR at 34 (sec. 12). Copyright owners and performers have no such recourse under a statutory license. They cannot terminate, short of a finding of infringement by a federal court, access to their works under the license. *See Webcaster II*, 72 FR 24107. We find that a late fee of 1.5%, as found in several of the agreements in the record, provides a proper incentive to the SDARS to maintain such timeliness and is not unduly harsh. SDARS Ex. 86

[43] Although Royalty Logic Inc. filed a petition to participate, it withdrew from the proceeding before the oral presentation of witnesses. *See, supra,* at 3.

at SE–REB 0025070 (sec. 7.2); SDARS Ex. 88 at SE–REB 0025912 (sec. 6.04(d)); SX Ex. 105 DR at A–7 (sec. 5(b)); SX Ex. 107 DR at 9 (sec. 6(c)). The 1.5% late fee we adopt today is consistent with the late fees applicable to webcasters and PSS.

b. Statements of Account and Reports of Use

SoundExchange proposes that a late fee of 1.5% also be assessed for untimely statements of account and reports of use. SX PFF at ¶¶ 1488–89; Kessler WRT at 3; 6/19/07 Tr. 44:15–17 (Kessler). SoundExchange justifies its request by asserting that untimely submission of these documents hamper its ability to promptly distribute royalties. SX PFF at ¶ 1488; Kessler WRT at 4. SoundExchange goes on that such late fees would provide licensees with a financial incentive to submit their statements and reports in a timely fashion. SX PFF at ¶ 1488; 6/19/07 Tr. 44:15–45:6 (Kessler).

The SDARS oppose SoundExchange's proposal. They assert that SoundExchange has provided no record evidence to support assessment of late fees to these submissions. SDARS PFF at ¶ 1319. Rather, the SDARS continue, the record establishes the opposite. Specifically, the SDARS point to several agreements between record labels and digital music distribution services which assess no late fee for anything other than a late payment. SDARS Ex. 85 at SE–REB 0027789; SDARS Ex. 86 at SE–REB 0025070; SDARS Ex. 87 at SE–REB 0028157; SDARS Ex. 88 at SE–REB 0025912; SX Ex. 104 DR at 23; SX Ex. 105 DR at A–6 of 7/1/04 agreement; SX Ex. 107 DR at 9; SX Ex. 256 RR at SE 0000626; SX Ex. 257 RR at SE 000148. In light of these agreements, they conclude that SoundExchange's proposal is unreasonable. SDARS RFF at ¶ 511.

In *Webcaster II,* the Judges determined ''that timely submission of a statement of account is critical to the quick and efficient distribution of royalties.'' 72 FR 24107. Given its importance to the distribution process, we imposed a late fee of 1.5% of the total royalty owed for that month for its untimely submission. 72 FR 24108. That reasoning applies with equal force here. Consequently, we adopt the same 1.5% per month late fee for untimely statements of account that was adopted in *Webcaster II* and proposed by SoundExchange here. We defer any decision, however, to apply a late fee to the reports of use in light of our determination that issues relating to reports of use are best addressed in the context of a rulemaking proceeding. *See infra* at Section VI.

As we found in *Webcaster II*, ''inconsequential good-faith omissions or errors'' in the statement of account ''should not warrant imposition of the late fee.'' 72 FR 24108.

In applying a late fee to both royalty payments and statements of account, we reject SoundExchange's request to have the late fee accrue separately for these items regardless of whether they are submitted simultaneously, as proposed by SoundExchange, or separately. Since we are requiring the simultaneous submission of payments and statements of account, we agree with the SDARS that SoundExchange has not demonstrated the need for such an onerous provision in that instance. Therefore, when a royalty payment and statement of account are submitted together in accordance with the regulations but are late, the offending SDAR will pay a late fee of 1.5% that covers both the payment and the statement. Conversely, if the payment and the statement are submitted separately and both are late, then the SDAR will pay a 1.5% late fee for the late payment and an additional 1.5% late fee for the untimely statement.

Finally, we reject the SDARS' proposal to require receipt of written notice of a late submission before the accrual of the late fee begins. *See* Second Amended Proposal of Rates and Terms of Sirius Satellite Inc. and XM Satellite Radio Inc. (October 1, 2007) at § 3._.3(c). The responsibility of timely submitting royalty payments and statements of account rests with the statutory licensee. We do not find such responsibility to be unduly burdensome. Therefore, we see no justification for providing the SDARS with any grace period before the commencement of the accrual period.

2. Confidentiality

The parties are at loggerheads over whether copyright owners and performers should have access to the information contained in the statements of account. SoundExchange seeks adoption of the same confidentiality provisions adopted in *Webcaster II*. SX PFF at ¶ 1491; *see also* 37 CFR 380.5. There, copyright owners and performers and their agents (as well as attorneys, consultants, and authorized agents in future proceedings) are allowed to review confidential information in or pertaining to statements of account, subject to appropriate confidentiality agreements. SX PFF at ¶ 1491. SoundExchange submits that such access assists copyright owners and performers in making informed decisions regarding licensees' compliance with their statutory obligations and in making audit and enforcement decisions. *Id.* SoundExchange contends that in its experience more restrictive confidentiality provisions, such as those adopted in *Webcaster I*, lead to ''significant operational and other problems'' which make ''it difficult for SoundExchange to complete its work'' and result in unfairness to copyright owners and performers, the ultimate beneficiaries of the royalties. SX PFF at ¶¶ 1492–8.

In opposing SoundExchange's proposal, the SDARS characterize SoundExchange's proposal as flawed because it ''assumes that the services at issue are not complying with their obligations or making accurate payments.'' SDARS PFF at ¶ 1327. The SDARS point out that unlike the webcasters in *Webcaster II*, they ''largely have been compliant with all of their obligations.'' *Id.* They conclude that ''[w]here there is no basis for the premise underlying SoundExchange's confidentiality proposal, there can be no justification for adopting'' it. *Id.*

We find that the SDARS' argument misses the mark and adopt the confidentiality provisions proposed by SoundExchange. We previously have made clear that we will not impose confidentiality restrictions without a showing by the licensee—the SDARS here—of how disclosure of the information in the statements of account would be, or likely would be, harmful; in other words, a showing that such information is confidential. *See* 72 FR 24108. The SDARS made no such showing here; indeed, they put forth no evidence in support of their proposal to deny copyright owners and performers access to the statements of account. The SDARS' history of being ''largely compliant'' in its statutory obligations, while commendable, provides no justification for adversely impacting copyright owners' and performers' substantive rights under the Section 112 and 114 licenses. *See, id.* There is no support in the statute for excluding copyright owners and performers from having access to the information necessary to pursue an infringement suit, especially when copyright owners have full and complete access to the statements of account filed under the cable, satellite and DART licenses. 72 FR 24108 & n.77.

As in *Webcaster II*, the general public will not have access to the statements of account. Therefore, access is limited to copyright owners and performers, and their agents and representatives identified in the regulations, whose

works were used by the SDARS under the Section 112 and 114 licenses. *See*, 72 FR 24109.

3. Audits and Verification of Payments

The SDARS strenuously object to SoundExchange's proposal that the SDARS be required to ''use commercially reasonable efforts to obtain or to provide access to any relevant books and records maintained by third parties for the purpose of the [royalty verification] audit.'' SDARS PFF at ¶ 1335. The SDARS argue that such a term is ''unheard of in marketplace contracts between record labels and digital distribution services.'' SDARS PFF at ¶ 1336, citing SDARS Exs. 85–89; SIR Exs. 43, 52–53; SX Exs. 104–05, 107 DR; SX Exs. 253–54, 256–258 RR. The SDARS add that such a term would interfere with their private contractual relationships with third parties. SDARS PFF at ¶ 1336.

SoundExchange counters that its proposal only requires the SDARS to use ''commercially reasonable efforts'' to obtain these records, and the SDARS have offered no reason why they cannot make such an effort ''to enable those audits to be as thorough and accurate as possible.'' SX RFF at ¶ 535.

Audits serve a critical function in the context of a statutory license where a copyright owner cannot easily terminate access to its works. Therefore, it is important that there be a high level of confidence in the results of such audits. It is equally important that the audit be as thorough and accurate as possible. Achievement of this goal requires a balancing of the benefits to SoundExchange of having at its disposal all pertinent records (or access thereto) against the burdens placed upon the SDARS in providing such records or access. We find that the balance weighs in favor of SoundExchange. Therefore, we are requiring the SDARS to use commercially reasonable efforts to obtain or provide access to records maintained by third parties that are relevant to the verification process. Imposition of this requirement is consistent with the terms we adopted in *Webcaster II. See*, 37 CFR 380.6(d).

VI. Notice and Recordkeeping

Section 803(c)(3) of the Copyright Act grants the Copyright Royalty Judges the authority to adopt terms regarding notice and recordkeeping which would supercede those set forth in 37 CFR part 370. Our exercise of this authority, however, is discretionary. 17 U.S.C. 803(c)(3) (''[T]he Copyright Royalty Judges *may* specify notice and recordkeeping requirements of users of the copyrights at issue that apply in lieu of those that would otherwise apply under regulations.'') (emphasis added). As with our consideration of terms, the Judges will adopt new or amended notice and/or recordkeeping requirements only where the parties sufficiently demonstrate the need for and the benefits of variances with existing regulations. The parties have once again failed to satisfy their burden.

The parties each have submitted recordkeeping proposals which go beyond the current interim notice and recordkeeping regulations set forth in 37 CFR part 370. *See* SoundExchange Third Amended Rate Proposal (August 6, 2007) at 9; Second Amended Proposal of Rates and Terms of Sirius Satellite Radio Inc. and XM Satellite Radio Inc. (October 1, 2007) at § 3_.6. The proposals include provisions covering the frequency of service of the reports of use, the additional information to be reported regarding each sound recording, the time period for retention of the reports of use by the SDARS, signature requirements, format and delivery requirements, confidentiality of the reports, and census reporting. While the parties agree on certain of the proposed provisions, they disagree on others.

The parties' proposals, with one exception discussed below, all suffer the same deficiency: they are nothing more than bare proposals unsupported by record evidence. The need for the changes and the benefits to be obtained from them are backed by nothing more than argument of counsel in their closing briefs. Without more, the Judges decline to exercise their discretion to amend the notice and recordkeeping regulations.

The one proposal that is offered with some record testimony is SoundExchange's request that the recordkeeping regulations be amended to require census reporting. Kessler WDT at 17–18; 8/29/07 Tr. 23:19–25:11 (Kessler); SX PFF at ¶ 1469. SoundExchange relies on the testimony it presented in *Webcaster II* for support of all of its proposed terms, including those relating to reports of use. Kessler WDT at 2; 6/19/07 Tr. 39:16–40:2, 47:8–19 (Kessler). The SDARS do not object to census reporting in general but disagree with SoundExchange that they should be required to report all sound recordings, noting that SoundExchange's proposal does not include the ''pragmatic exceptions'' found in the current recordkeeping regulations. SDARS PFF at ¶¶ 1329–30. Such ''exceptions'' require no reporting of sound recordings that are not under federal copyright protection or whose term has expired, that have been directly licensed by the Service or that amount to an incidental performance as defined in the regulations. 37 CFR 370.3(b)(8)(i)–(iii); SDARS PFF at ¶ 1329.

When the interim notice and recordkeeping rules were promulgated, we made clear our intention to ''monitor the operation of these regulations * * * and [to] request public comment in the future as to the need for amendment or improvement prior to adopting final regulations.'' *Notice and Recordkeeping for Use of Sound Recordings Under Statutory License (Interim Final Rule)*, 71 FR 59010, 59011 (October 6, 2006) (codified at 37 CFR Part 370). In *Webcaster II*, we declined to address notice and recordkeeping as part of that rate setting proceeding, explaining that ''because our recordkeeping regulations are interim and not final, there is ample opportunity to again address'' issues such as the Services' recordkeeping costs and SoundExchange's request for census reporting in the more appropriate context of a future rulemaking proceeding. 72 FR 24110. Moreover, we found ''there was no persuasive testimony compelling an adjustment of the current recordkeeping regulations.'' *Id.* SoundExchange has failed to present any persuasive evidence in this proceeding to challenge our conclusion in *Webcaster II*, and we therefore do not see any reason to now adopt its proposed census reporting requirement, particularly where the parties cannot agree as to what information constitutes census reporting.

VII. Determination and Order

Having fully considered the record, the Copyright Royalty Judges make the above Findings of Fact based on the record. Relying upon these Findings of Fact, the Copyright Royalty Judges unanimously adopt every portion of this Determination of the Rates and Terms of the Statutory Licenses for the digital transmission of sound recordings, pursuant to 17 U.S.C. 114, and for the making of ephemeral phonorecords, pursuant to 17 U.S.C. 112(e).

So ordered.

James Scott Sledge,
Chief Copyright Royalty Judge.

William J. Roberts, Jr.,
Copyright Royalty Judge.

Stanley C. Wisniewski,
Copyright Royalty Judge.

Dated: January 10, 2008.

List of Subjects in 37 CFR Part 382

Copyright, Digital audio transmissions, Performance right, Sound recordings.

Final Regulations

■ For the reasons set forth in the preamble, the Copyright Royalty Judges are amending part 382 of Chapter III to title 37 of the Code of Federal Regulations by adding a new Subpart B to read as follows:

PART 382—RATES AND TERMS FOR DIGITAL TRANSMISSIONS OF SOUND RECORDINGS AND THE REPRODUCTION OF EPHEMERAL RECORDINGS BY PREEXISTING SUBSCRIPTION SERVICES AND PREEXISTING SATELLITE DIGITAL AUDIO RADIO SERVICES

Subpart B—Preexisting Satellite Digital Audio Radio Services

Sec.

382.10 General.
382.11 Definitions.
382.12 Royalty fees for public performance of sound recordings and the making of ephemeral recordings.
382.13 Terms for making payment of royalty fees and statements of account.
382.14 Confidential information.
382.15 Verification of royalty payments.
382.16 Verification of royalty distributions.
382.17 Unclaimed funds.

Authority: 17 U.S.C. 112(e), 114(f), 804(b)(3).

§ 382.10 General.

(a) *Scope.* This subpart establishes rates and terms of royalty payments for the public performance of sound recordings in certain digital transmissions by Licensees in accordance with the provisions of 17 U.S.C. 114, and the making of Ephemeral Recordings by Licensees in accordance with the provisions of 17 U.S.C. 112(e), during the period from January 1, 2007, through December 31, 2012.

(b) *Legal compliance.* Licensees relying upon the statutory licenses set forth in 17 U.S.C. 112 and 114 shall comply with the requirements of those sections, the rates and terms of this subpart, and any other applicable regulations.

(c) *Relationship to voluntary agreements.* Notwithstanding the royalty rates and terms established in this subpart, the rates and terms of any license agreements entered into by Copyright Owners and Licensees shall apply in lieu of the rates and terms of this subpart to transmission within the scope of such agreements.

§ 382.11 Definitions.

For purposes of this subpart, the following definitions shall apply:

Collective is the collection and distribution organization that is designated by the Copyright Royalty Judges. For the 2007–2012 license period, the Collective is SoundExchange, Inc.

Copyright Owners are sound recording copyright owners who are entitled to royalty payments made under this subpart pursuant to the statutory licenses under 17 U.S.C. 112(e) and 114(f).

Ephemeral Recording is a phonorecord created for the purpose of facilitating a transmission of a public performance of a sound recording under a statutory license in accordance with 17 U.S.C. 114(f) and subject to the limitations specified in 17 U.S.C. 112(e).

GAAP shall mean generally accepted accounting principles in effect from time to time in the United States.

Gross Revenues. (1) Gross Revenues shall mean revenue recognized by the Licensee in accordance with GAAP from the operation of an SDARS, and shall be comprised of the following:

(i) Subscription revenue recognized by Licensee directly from residential U.S. subscribers for Licensee's SDARS; and

(ii) Licensee's advertising revenues, or other monies received from sponsors, if any, attributable to advertising on channels other than those that use only incidental performances of sound recordings, less advertising agency and sales commissions.

(2) Gross Revenues shall include such payments as set forth in paragraphs (1)(i) and (ii) of the definition of ''Gross Revenues'' to which Licensee is entitled but which are paid to a parent, wholly-owned subsidiary or division of Licensee.

(3) Gross Revenues shall exclude:

(i) Monies or other consideration attributable to the sale and/or license of equipment and/or other technology, including but not limited to bandwidth, sales of devices that receive the Licensee's SDARS and any taxes, shipping and handling fees therefor;

(ii) Royalties paid to Licensee for intellectual property rights;

(iii) Monies or other consideration received by Licensee from the sale of phonorecords and digital phonorecord deliveries;

(iv) Sales and use taxes, shipping and handling, credit card, invoice, and fulfillment service fees;

(v) Bad debt expense, and

(vi) Revenues recognized by Licensee for the provision of

(A) Current and future data services offered for a separate charge (e.g., weather, traffic, destination information, messaging, sports scores, stock ticker information, extended program associated data, video and photographic images, and such other telematics and/or data services as may exist from time to time);

(B) Channels, programming, products and/or other services offered for a separate charge where such channels use only incidental performances of sound recordings;

(C) Channels, programming, products and/or other services provided outside of the United States; and

(D) Channels, programming, products and/or other services for which the performance of sound recordings and/or the making of ephemeral recordings is exempt from any license requirement or is separately licensed, including by a statutory license and, for the avoidance of doubt, webcasting, audio services bundled with television programming, interactive services, and transmissions to business establishments.

Licensee is a person that has obtained a statutory license under 17 U.S.C. 114, and the implementing regulations, to make transmissions over a preexisting satellite digital audio radio service, and has obtained a statutory license under 17 U.S.C. 112(e), and the implementing regulations, to make Ephemeral Recordings for use in facilitating such transmissions.

Performers means the independent administrators identified in 17 U.S.C. 114(g)(2)(B) and (C), and the parties identified in 17 U.S.C. 114(g)(2)(D).

Qualified Auditor is a Certified Public Accountant.

Residential means, with respect to a service, a service that may be licensed under the provisions of 17 U.S.C. 114(d)(2)(B); and, with respect to subscribers, subscribers to such a service.

SDARS means the preexisting satellite digital audio radio services as defined in 17 U.S.C. 114(j)(10).

Term means the period commencing January 1, 2007, and continuing through December 31, 2012.

§ 382.12 Royalty fees for the public performance of sound recordings and the making of ephemeral recordings.

The monthly royalty fee to be paid by a Licensee for the public performance of sound recordings pursuant to 17 U.S.C. 114(d)(2) and the making of any number of ephemeral phonorecords to facilitate such performances pursuant to 17 U.S.C. 112(e) shall be the percentage of monthly Gross Revenues resulting from Residential services in the United States as follows: for 2007 and 2008, 6.0%; for 2009, 6.5%; for 2010, 7.0%; for 2011, 7.5%; and for 2012, 8.0%.

§ 382.13 Terms for making payment of royalty fees and statements of account.

(a) *Payment to the Collective.* A Licensee shall make the royalty payments due under § 382.12 to the Collective.

(b) *Designation of the Collective.* (1) Until such time as a new designation is made, SoundExchange, Inc., is designated as the Collective to receive statements of account and royalty payments from Licensees due under § 382.12 and to distribute such royalty payments to each Copyright Owner and Performer, or their designated agents, entitled to receive royalties under 17 U.S.C. 112(e) or 114.

(2) If SoundExchange, Inc. should dissolve or cease to be governed by a board consisting of equal numbers of representatives of Copyright Owners and Performers, then it shall be replaced by a successor Collective upon the fulfillment of the requirements set forth in paragraph (b)(2)(i) of this section.

(i) By a majority vote of the nine Copyright Owner representatives and the nine Performer representatives on the SoundExchange board as of the last day preceding the condition precedent in paragraph (b)(2) of this section, such representatives shall file a petition with the Copyright Royalty Judges designating a successor to collect and distribute royalty payments to Copyright Owners and Performers entitled to receive royalties under 17 U.S.C. 112(e) or 114 that have themselves authorized the Collective.

(ii) The Copyright Royalty Judges shall publish in the **Federal Register** within 30 days of receipt of a petition filed under paragraph (b)(2)(i) of this section an order designating the Collective named in such petition.

(c) *Monthly payments.* A Licensee shall make any payments due under § 382.12 on a monthly basis on or before the 45th day after the end of each month for that month, except that payments due under § 382.12 for the period beginning January 1, 2007, through the last day of the month in which the Copyright Royalty Judges issue their final determination adopting these rates and terms shall be due 45 days after the end of such period. All payments shall be rounded to the nearest cent.

(d) *Late payments and statements of account.* A Licensee shall pay a late fee of 1.5% per month, or the highest lawful rate, whichever is lower, for any payment and/or statement of account received by the Collective after the due date. Late fees shall accrue from the due date until payment is received by the Collective.

(e) *Statements of account.* Any payment due under § 382.12 shall be accompanied by a corresponding statement of account. A statement of account shall contain the following information:

(1) Such information as is necessary to calculate the accompanying royalty payments;

(2) The name, address, business title, telephone number, facsimile number (if any), electronic mail address and other contact information of the person to be contacted for information or questions concerning the content of the statement of account;

(3) The handwritten signature of a duly authorized officer or representative of the Licensee;

(4) The printed or typewritten name of the person signing the statement of account;

(5) The date of signature;

(6) The title or official position held in relation to the Licensee by the person signing the statement of account;

(7) A certification of the capacity of the person signing; and

(8) A statement to the following effect:

> I, the undersigned officer or representative of the Licensee, have examined this statement of account and hereby state that it is true, accurate, and complete to my knowledge after reasonable due diligence.

(f) *Distribution of royalties.* (1) The Collective shall promptly distribute royalties received from Licensees to Copyright Owners and Performers, or their designated agents, that are entitled to such royalties. The Collective shall only be responsible for making distributions to those Copyright Owners, Performers, or their designated agents who provide the Collective with such information as is necessary to identify the correct recipient. The Collective shall distribute royalties on a basis that values all performances by a Licensee equally based upon the information provided under the reports of use requirements for Licensees contained in § 370.3 of this chapter.

(2) If the Collective is unable to locate a Copyright Owner or Performer entitled to a distribution of royalties under paragraph (f)(1) of this section within 3 years from the date of payment by a Licensee, such royalties shall be handled in accordance with § 382.17.

(g) *Retention of records.* Books and records of a Licensee and of the Collective relating to payments of and distributions of royalties shall be kept for a period of not less than the prior 3 calendar years.

§ 382.14 Confidential information.

(a) *Definition.* For purposes of this subpart, ''Confidential Information'' shall include the statements of account and any information contained therein, including the amount of royalty payments, and any information pertaining to the statements of account reasonably designated as confidential by the Licensee submitting the statement.

(b) *Exclusion.* Confidential Information shall not include documents or information that at the time of delivery to the Collective are public knowledge. The party claiming the benefit of this provision shall have the burden of proving that the disclosed information was public knowledge.

(c) *Use of Confidential Information.* In no event shall the Collective use any Confidential Information for any purpose other than royalty collection and distribution and activities related directly thereto.

(d) *Disclosure of Confidential Information.* Access to Confidential Information shall be limited to:

(1) Those employees, agents, attorneys, consultants and independent contractors of the Collective, subject to an appropriate confidentiality agreement, who are engaged in the collection and distribution of royalty payments hereunder and activities related thereto, for the purpose of performing such duties during the ordinary course of their work and who require access to the Confidential Information;

(2) An independent and Qualified Auditor, subject to an appropriate confidentiality agreement, who is authorized to act on behalf of the Collective with respect to verification of a Licensee's statement of account pursuant to § 382.15 or on behalf of a Copyright Owner or Performer with respect to the verification of royalty distributions pursuant to § 382.16;

(3) Copyright Owners and Performers, including their designated agents, whose works have been used under the statutory licenses set forth in 17 U.S.C. 112(e) and 114(f) by the Licensee whose Confidential Information is being supplied, subject to an appropriate confidentiality agreement, and including those employees, agents, attorneys, consultants and independent contractors of such Copyright Owners and Performers and their designated agents, subject to an appropriate confidentiality agreement, for the purpose of performing their duties during the ordinary course of their work and who require access to the Confidential Information; and

(4) In connection with future proceedings under 17 U.S.C. 112(e) and 114(f) before the Copyright Royalty Judges, and under an appropriate protective order, attorneys, consultants and other authorized agents of the parties to the proceedings or the courts.

(e) *Safeguarding of Confidential Information.* The Collective and any person identified in paragraph (d) of this section shall implement procedures to safeguard against unauthorized access to or dissemination of any Confidential Information using a reasonable standard of care, but no less than the same degree of security used to protect Confidential Information or similarly sensitive information belonging to the Collective or person.

§ 382.15 Verification of royalty payments.

(a) *General.* This section prescribes procedures by which the Collective may verify the royalty payments made by a Licensee.

(b) *Frequency of verification.* The Collective may conduct a single audit of a Licensee, upon reasonable notice and during reasonable business hours, during any given calendar year, for any or all of the prior 3 calendar years, but no calendar year shall be subject to audit more than once.

(c) *Notice of intent to audit.* The Collective must file with the Copyright Royalty Judges a notice of intent to audit a particular Licensee, which shall, within 30 days of the filing of the notice, publish in the **Federal Register** a notice announcing such filing. The notification of intent to audit shall be served at the same time on the Licensee to be audited. Any such audit shall be conducted by an independent and Qualified Auditor identified in the notice, and shall be binding on all parties.

(d) *Acquisition and retention of report.* The Licensee shall use commercially reasonable efforts to obtain or to provide access to any relevant books and records maintained by third parties for the purpose of the audit. The Collective shall retain the report of the verification for a period of not less than 3 years.

(e) *Acceptable verification procedure.* An audit, including underlying paperwork, which was performed in the ordinary course of business according to generally accepted auditing standards by an independent and Qualified Auditor, shall serve as an acceptable verification procedure for all parties with respect to the information that is within the scope of the audit.

(f) *Consultation.* Before rendering a written report to the Collective, except where the auditor has a reasonable basis to suspect fraud and disclosure would, in the reasonable opinion of the auditor, prejudice the investigation of such suspected fraud, the auditor shall review the tentative written findings of the audit with the appropriate agent or employee of the Licensee being audited in order to remedy any factual errors and clarify any issues relating to the audit; Provided that an appropriate agent or employee of the Licensee reasonably cooperates with the auditor to remedy promptly any factual errors or clarify any issues raised by the audit.

(g) *Costs of the verification procedure.* The Collective shall pay the cost of the verification procedure, unless it is finally determined that there was an underpayment of 10% or more, in which case the Licensee shall, in addition to paying the amount of any underpayment, bear the reasonable costs of the verification procedure.

§ 382.16 Verification of royalty distributions.

(a) *General.* This section prescribes procedures by which any Copyright Owner or Performer may verify the royalty distributions made by the Collective; Provided, however, that nothing contained in this section shall apply to situations where a Copyright Owner or Performer and the Collective have agreed as to proper verification methods.

(b) *Frequency of verification.* A Copyright Owner or Performer may conduct a single audit of the Collective upon reasonable notice and during reasonable business hours, during any given calendar year, for any or all of the prior 3 calendar years, but no calendar year shall be subject to audit more than once.

(c) *Notice of intent to audit.* A Copyright Owner and Performer must file with the Copyright Royalty Judges a notice of intent to audit the Collective, which shall, within 30 days of the filing of the notice, publish in the **Federal Register** a notice announcing such filing. The notification of intent to audit shall be served at the same time on the Collective. Any audit shall be conducted by an independent and Qualified Auditor identified in the notice, and shall be binding on all Copyright Owners and Performers.

(d) *Acquisition and retention of report.* The Collective shall use commercially reasonable efforts to obtain or to provide access to any relevant books and records maintained by third parties for the purpose of the audit. The Copyright Owner or Performer requesting the verification procedure shall retain the report of the verification for a period of not less than 3 years.

(e) *Acceptable verification procedure.* An audit, including underlying paperwork, which was performed in the ordinary course of business according to generally accepted auditing standards by an independent and Qualified Auditor, shall serve as an acceptable verification procedure for all parties with respect to the information that is within the scope of the audit.

(f) *Consultation.* Before rendering a written report to a Copyright Owner or Performer, except where the auditor has a reasonable basis to suspect fraud and disclosure would, in the reasonable opinion of the auditor, prejudice the investigation of such suspected fraud, the auditor shall review the tentative written findings of the audit with the appropriate agent or employee of the Collective in order to remedy any factual errors and clarify any issues relating to the audit; Provided that the appropriate agent or employee of the Collective reasonably cooperates with the auditor to remedy promptly any factual errors or clarify any issues raised by the audit.

(g) *Costs of the verification procedure.* The Copyright Owner or Performer requesting the verification procedure shall pay the cost of the procedure, unless it is finally determined that there was an underpayment of 10% or more, in which case the Collective shall, in addition to paying the amount of any underpayment, bear the reasonable costs of the verification procedure.

§ 382.17 Unclaimed funds.

If the Collective is unable to identify or locate a Copyright Owner or Performer who is entitled to receive a royalty distribution under this subpart, the Collective shall retain the required payment in a segregated trust account for a period of 3 years from the date of distribution. No claim to such distribution shall be valid after the expiration of the 3-year period. After expiration of this period, the Collective may apply the unclaimed funds to offset any costs deductible under 17 U.S.C. 114(g)(3). The foregoing shall apply notwithstanding the common law or statutes of any State.

Dated: January 10, 2008.

James Scott Sledge,

Chief Copyright Royalty Judge.

[FR Doc. E8–669 Filed 1–23–08; 8:45 am]

BILLING CODE 1410–72–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2007–0399; FRL–8517–4]

Approval and Promulgation of Air Quality Implementation Plans; Connecticut; State Implementation Plan Revision to Implement the Clean Air Interstate Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Connecticut on April 26, 2007, with amendments submitted on September 12, 2007. This SIP revision addresses the requirements of EPA's Clean Air Interstate Rule (CAIR), promulgated on May 12, 2005 and subsequently revised on April 28, 2006 and December 13, 2006. EPA has determined that the SIP revision fully implements the CAIR requirements for Connecticut. Therefore, as a consequence of the SIP approval, the Administrator of EPA will also, in a separate document, issue a final rule to withdraw the Federal Implementation Plan (FIP) concerning NO_X ozone-season emissions for Connecticut.

In the SIP revision that EPA is approving, Connecticut will meet CAIR requirements by participating in the EPA-administered cap-and-trade program addressing NO_X ozone-season emissions. Connecticut's SIP revision is based on EPA's model CAIR NO_X ozone season rule and is, in most respects, substantively identical to that model rule. The Connecticut CAIR program has two major substantive differences from that model rule (expanded applicability, and a different methodology for allocating NO_X allowances), both of which are consistent with the flexibility allowed under CAIR for state participation in the EPA-administered cap-and-trade program. The SIP revision complies with the statutory and regulatory requirements for approval of a CAIR NO_X ozone-season program. This action is being taken in accordance with the Clean Air Act.

DATES: *Effective Date:* This rule is effective on January 24, 2008.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R01–OAR–2007–0399. 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, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100, Boston, MA. EPA requests that, if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

Copies of the documents relevant to this action are also available for public inspection during normal business hours, by appointment at the Bureau of Air Management, Department of Environmental Protection, State Office Building, 79 Elm Street, Hartford, CT 06106–1630.

FOR FURTHER INFORMATION CONTACT: If you have questions concerning today's action, please contact Alison C. Simcox, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (CAQ), Boston, MA 02114–2023, telephone number (617) 918–1684, fax number (617) 918–0684, e-mail *simcox.alison@epa.gov*.

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I. What Action Is EPA Taking?

EPA is approving a revision to Connecticut's SIP that includes a new regulation, Regulations of Connecticut State Agencies (RCSA) section 22a–174–22c, ''The Clean Air Interstate Rule (CAIR) Nitrogen Oxides (NO_X) Ozone Season Trading Program'' (herein called ''Connecticut's CAIR program''), repeal of RCSA section 22a–174–22a (''The Connecticut NO_X Budget Program''), as of September 4, 2007, and repeal of RCSA section 22a–174–22b, ''The Connecticut Post-2002 NO_X Budget Program'' (herein called the ''Connecticut NO_X SIP Call trading program''), as of May 1, 2010. This SIP revision was first submitted on April 26, 2007, but includes amendments submitted on September 12, 2007.

The CT DEP had requested that EPA ''parallel process'' Connecticut's proposed CAIR SIP revision. Under this procedure, EPA prepared its proposed approval of Connecticut's SIP revision before the state's final adoption and repeal of the regulations referenced above.

EPA has reviewed Connecticut's final adopted regulations and determined that changes were made to clarify meaning, improve consistency, or to address redundancy, and that they do not differ significantly from the ''post-hearing final draft'' version that was the subject of the notice of proposed rulemaking (NPR) for this SIP Revision (72 FR 50305). For example, definitions of ''commence commercial operation'' and ''commence operation'' were clarified; the word ''through'' was substituted for a hyphen between dates listed to clearly identify the control periods included in the regulation; and language was added to clarify that the term ''permitting authority'' has the same meaning as in 40 CFR part 96, subpart AAAA, which refers to the CAIR NO_X Ozone Season Trading Program. None of the changes made are deemed significant for SIP approval purposes, and it is, therefore, appropriate to prepare this final rule.

In its SIP revision, Connecticut will meet CAIR requirements by requiring certain electric generating units (EGUs) to participate in the EPA-administered State CAIR cap-and-trade program addressing NO_X ozone-season emissions. EPA has determined that the Connecticut SIP, as revised, meets the applicable requirements of CAIR. As a consequence of the SIP approval, the Administrator of EPA will also, in a separate document, issue a final rule to withdraw the FIP concerning NO_X ozone-season emissions for Connecticut. That action will delete and reserve 40 CFR 52.386. The withdrawal of the CAIR FIP for Connecticut is a conforming amendment that must be made once the SIP is approved because EPA's authority to issue the FIP was premised on a deficiency in the SIP for Connecticut. Once the SIP is fully approved, EPA no longer has authority for the FIP. Thus, EPA will not have the option of maintaining the FIP following the full SIP approval. Accordingly, EPA does not intend to offer an opportunity for a public hearing or an additional

opportunity for written public comment on the withdrawal of the FIP.

II. What Is the Regulatory History and General Requirements of CAIR and the CAIR FIPs?

The Clean Air Interstate Rule (CAIR) was published by EPA on May 12, 2005 (70 FR 25162). In this rule, EPA determined that 28 States and the District of Columbia contribute significantly to nonattainment and interfere with maintenance of the national ambient air quality standards (NAAQS) for fine particles ($PM_{2.5}$) and/or 8-hour ozone in downwind States in the eastern part of the country. As a result, EPA required those upwind States to revise their SIPs to include control measures that reduce emissions of SO_2, which is a precursor to $PM_{2.5}$ formation, and/or NO_X, which is a precursor to both ozone and $PM_{2.5}$ formation. For jurisdictions that contribute significantly to downwind $PM_{2.5}$ nonattainment, CAIR sets annual State-wide emission reduction requirements (i.e., budgets) for SO_2 and annual State-wide emission reduction requirements for NO_X. Similarly, for jurisdictions that contribute significantly to 8-hour ozone nonattainment, CAIR sets State-wide emission reduction requirements for NO_X for the ozone season (May 1st to September 30th). Under CAIR, States may implement these reduction requirements by participating in the EPA-administered cap-and-trade programs or by adopting other control measures. The first phase of NO_X reductions starts in 2009 and continues through 2014, while the first phase of SO_2 reductions starts in 2010 and continues through 2014. The second phase of reductions for both NO_X and SO_2 starts in 2015 and continues thereafter.

More information on the regulatory history and requirements of CAIR and the CAIR FIPs is available in the NPR and will not be restated here.

III. EPA Analysis of Connecticut's CAIR SIP Submittal

A brief summary of EPA's review of Connecticut's CAIR program is given below. Additional details regarding requirements of Connecticut's 22a–174–22c regulation and EPA's evaluation of this regulation are available in the NPR for this SIP revision. In addition, Connecticut's CAIR SIP submittal is available in the docket supporting this action.

A. State Budgets for Allowance Allocations

The CAIR NO_X annual and ozone season budgets were developed from historical heat input data for EGUs. Using these data, EPA calculated annual and ozone season regional heat input values, which were multiplied by 0.15 pounds per million British thermal units (lb/mmBtu), for phase 1 of the CAIR program (2009–2014) and by 0.125 lb/mmBtu, for phase 2 of the CAIR program (2015 and thereafter) to obtain regional NO_X budgets for 2009–2014 and for 2015 and thereafter, respectively. EPA derived the State NO_X annual and ozone season budgets from the regional budgets using State heat input data adjusted by fuel factors. Connecticut, however, is only required to participate in the CAIR NO_X ozone-season program, not the CAIR NO_X annual or SO_2 trading programs. Therefore, only CAIR NO_X ozone-season budgets apply to the Connecticut CAIR program.

In today's action, EPA is approving Connecticut's SIP revision, which includes a new regulation, 22a–174–22c, which comprises Connecticut's CAIR program. This SIP revision adopts the budget established for the State in CAIR, i.e., 2,559 tons of NO_X ozone-season emissions for CAIR phases 1 and 2, plus an additional 132 tons of NO_X ozone-season emissions for both phases 1 and 2 to account for NO_X emissions from ''non-EGUs'' from the Connecticut NO_X SIP Call trading program. The total NO_X ozone-season budget is therefore 2,691 tons of NO_X ozone-season emissions for CAIR phases 1 and 2. Connecticut's SIP revision sets this budget as the total number of allowances (with each allowance authorizing one ton of NO_X ozone-season emissions) available for allocation for each year under the EPA-administered CAIR cap-and-trade program.

B. CAIR Cap-and-Trade Programs

The CAIR NO_X annual and ozone-season model trading rules both largely mirror the structure of the NO_X SIP Call model trading rule in 40 CFR part 96, subparts A through I. While the provisions of the NO_X annual and ozone-season model rules are similar, there are some differences. For example, the NO_X ozone season model rule reflects the fact that the CAIR NO_X ozone-season trading program replaces the NO_X SIP Call trading program after the 2008 ozone-season and is coordinated with the NO_X SIP Call program. The NO_X ozone-season model rule provides incentives for early emissions reductions by allowing banked, pre-2009 NO_X SIP Call allowances to be used for compliance in the CAIR NO_X ozone-season trading program. In addition, States have the option of continuing to meet their NO_X SIP Call requirements by participating in the CAIR NO_X ozone season trading program and including all their NO_X SIP Call trading sources in that program.

In the SIP revision, Connecticut will implement its CAIR budgets by requiring EGUs (as well as ''non-EGUs'' from its NO_X SIP Call trading program, as discussed below) to participate in EPA-administered cap-and-trade programs for NO_X ozone-season emissions. Connecticut has adopted a full SIP revision that adopts, with certain allowed changes discussed below, the CAIR model cap-and-trade rules for NO_X ozone-season emissions.

C. Applicability Provisions for Non-EGU NO_X SIP Call Sources

In general, the CAIR model trading rules apply to any stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe producing electricity for sale.

States have the option of bringing in, for the CAIR NO_X ozone-season program only, those units in the State's NO_X SIP Call trading program that are not EGUs as defined under CAIR (herein called ''non-EGUs''). Under this option, the CAIR NO_X ozone-season program must cover all large industrial boilers and combustion turbines, as well as any small EGUs (i.e., units serving a generator with a nameplate capacity of 25 MWe or less) that the State currently requires to be in the NO_X SIP Call trading program.

Connecticut has chosen to expand the applicability provisions of the CAIR NO_X ozone season trading program to include all units in the State's NO_X SIP Call trading program. Units in the Connecticut NO_X SIP Call trading program include EGUs of 15 MW or more and non-EGUs (such as industrial boilers and combustion turbines) with a maximum design heat input of 250 MMBtu/hr or more. These units will be included in the Connecticut CAIR program beginning with the control period in 2009. EPA has determined that Connecticut's regulation 22a–174–22c includes the allowable CAIR applicability provisions relating to adding all NO_X SIP Call trading-program units to the Connecticut CAIR NO_X ozone season program.

D. NO_X Allowance Allocations

Deadlines: CAIR provides in 40 CFR 51.123(aa)(2)(iii)(C) that for a full SIP revision, ''[t]he State's methodology must require that, for EGUs commencing operation before January 1, 2001, the State will determine, and notify the Administrator of, each unit's allocation of CAIR NO_X allowances by October 31, 2006 for the ozone seasons 2009, 2010, and 2011.'' Connecticut's SIP revision requires that it submit and it in fact did submit these allocations by April 30, 2007 (the deadline for submittal applicable to abbreviated SIP revisions under 40 CFR 51.123(ee)(2)(ii)(C)). The purpose of the October 31, 2006 deadline was to allow EPA's Clean Air Markets Division sufficient time to process the allocations. At this point, as Connecticut has in fact submitted its allocations well before the date of this document, and as the Clean Air Markets Division is fully able to process the allocations, it makes no difference whether EPA received the 2009–2011 allocations in April of 2007 or October of 2006. EPA will still be able to record the allocations and provide the allowances to owners and operators sufficiently in advance of the 2009–2011 control periods. EPA considers the late submittal harmless error and consequently approves this SIP revision.

NO_X allowance-allocation methodology: Under the NO_X allowance-allocation methodology in the CAIR model trading rules and in the CAIR FIP, NO_X annual and ozone-season allowances are allocated to units that have operated for five years (i.e., ''existing units''), based on heat input data from a three-year period that are adjusted for fuel type by using fuel factors of 1.0 for coal, 0.6 for oil, and 0.4 for other fuels. The CAIR model trading rules and the CAIR FIP also provide a new unit set-aside from which units without five years of operation are allocated allowances based on the units' prior year emissions.

States may establish in their SIP submissions a different NO_X allowance-allocation methodology that will be used to allocate allowances to sources in the State if certain requirements are met concerning the timing of submission of units' allocations to the Administrator for recordation and the total amount of allowances allocated for each control period. In adopting alternative NO_X allowance-allocation methodologies, States have flexibility with regard to:

1. The cost to recipients of the allowances, which may be distributed for free or auctioned;
2. The frequency of allocations;
3. The basis for allocating allowances, which may be distributed, for example, based on historical heat input or electric and thermal output; and
4. The use of allowance set-asides and, if used, their size.

Connecticut has chosen to replace the provisions of the CAIR NO_X ozone-season model trading rule concerning allowance allocations with its own methodology. Connecticut's CAIR program is codified at RCSA section 22a–174–22c. Whereas the model trading rule uses an allocation methodology that is fuel-adjusted and based on heat input, Connecticut's allocation methodology is not fuel-adjusted and is largely based on heat output. Connecticut also provides a percentage of allowances for a new unit set-aside and for an energy efficiency/renewable energy set-aside (EERESA) and Qualifying Other Project (QOPs).

For the 2009 through 2011 control periods, Connecticut will first allocate NO_X allowances to CAIR NO_X Ozone Season units which are cogeneration, industrial or waste-tire-fired units on an input basis, then will allocate allowances to older EGUs using an output basis. Remaining allocations will be allocated to newer EGUs on a pro-rated output basis. For the 2012 control period and beyond, Connecticut will allocate allowances to both older and newer EGUs on a pro-rated output basis.

Connecticut has set a new unit set-aside at 7 percent of the State's CAIR budget during CAIR phase 1 (2009–2014), and at 5 percent of the State's CAIR budget during CAIR phase 2 (2015 and thereafter). Therefore, the new unit set-aside includes 200 CAIR NO_X ozone-season allowances during CAIR phase 1, and 134 allowances during CAIR phase 2. Connecticut has set the EERESA at 10 percent of the State's CAIR budget for both phases of the CAIR program. Therefore, the EERESA includes 268 CAIR NO_X allowances for the 2009 and subsequent ozone-season control periods.

More details on Connecticut's methodology for allocating CAIR allowances, as well as information on Connecticut CAIR permits and requirements for facilities to report emissions data, can be found in the NPR and in Connecticut's CAIR SIP submittal available in the docket supporting this action.

In the NPR, EPA identified two potential ambiguities in the allocation provisions of Connecticut's proposed CAIR program, and proposed its interpretations of those provisions. See 72 FR 50309. EPA received no comments regarding these proposed interpretations. Consequently, EPA interprets the provisions involved as follows.

First, the proposed regulation uses the term ''NO[X] allowance,'' which is not defined, in three places. See RCSA sections 22a–174–22c(c)(2), 22a–174–22c(c)(3)(B), 22a–174–22c(g)(4). EPA interprets the term ''NO[X] allowance'' when used in RCSA section 22a–174–22c as being identical to the term ''CAIR NO[X] Ozone Season allowance'' as defined at 40 CFR 96.302.

Second, under RCSA sections 22a–174–22c(e)(7)(A) and (B) and 22a–174–22c(e)(8)(A), there is no limit to the number of allowances that can be allocated to CAIR NO_X Ozone Season units which are cogeneration units, industrial units, waste-tire-fired units, or Phase I units in any control period. For purposes of construing Connecticut's proposed SIP revision, EPA interprets RCSA sections 22a–174–22c(e)(2) and 22a–174–22c(e)(3) to prohibit the Connecticut DEP from allocating allowances in excess of the total state budget, and to control in any conflict with RCSA sections 22a–174–22c(e)(7)(A) and (B) and 22a–174–22c(e)(8)(A). Thus, if the operation of RCSA sections 22a–174–22c(e)(7)(A)–(B) and/or 22a–174–22c(e)(8)(A) were to yield allowances for CAIR NO_X Ozone Season units which are cogeneration units, industrial units, waste-tire-fired units, or Phase I units in excess of the state budget, either by themselves or in combination with allocations to other categories, then RCSA sections 22a–174–22c(e)(2) and 22a–174–22c(e)(3) would require the Connecticut DEP to recalculate or reallocate allowances so as not to exceed the state budget.

EPA has relied on these interpretations of Connecticut's proposed SIP revision for the purposes of approving it as meeting the requirements of the Act and the CAIR program, and these interpretations represent EPA's formal interpretations of the SIP provisions at issue for purposes of federal law.

E. Individual Opt-in Units

The Connecticut CAIR SIP does not include opt-in provisions because the State has chosen to allocate CAIR allowances using an energy-output methodology that cannot be used for opt-in sources under the model CAIR NO_X ozone-season trading rule. In addition, Connecticut does not expect there to be a demand for opt-in provisions as no source opted into Connecticut's NO_X SIP Call trading program.

IV. Final Action

EPA is approving a revision to Connecticut's SIP that includes a new regulation, RCSA section 22a–174–22c (Connecticut's CAIR program), and repeal of RCSA section 22a–174–22a (''The Connecticut NO_X Budget Program''), as of September 4, 2007, and of RCSA section 22a–174–22b (''The Connecticut Post-2002 NO_X Budget Program''), as of May 1, 2010. Under this SIP revision, Connecticut will participate in the EPA-administered cap-and-trade program for NO_X ozone-season emissions. The SIP revision meets the applicable requirements in 40 CFR 51.123(o) and (aa), with regard to NO_X ozone season emissions. EPA has determined that the SIP as revised meets the requirements of CAIR. As a consequence of the SIP approval, the Administrator of EPA will also issue, without providing an opportunity for a public hearing or an additional opportunity for written public comment, a final rule to withdraw the CAIR FIP concerning NO_X ozone-season emissions for Connecticut. That action will delete and reserve 40 CFR 52.386 in part 52.

Other specific requirements of the CAIR SIP revision and the rationale for EPA's approval are explained in the NPR and will not be restated here. No public comments were received on the NPR.

V. When Is This Action Effective?

EPA finds that there is good cause for this approval to become effective on the date of publication of this action in the **Federal Register**, because a delayed effective date is unnecessary due to the nature of the approval, which allows the State to make allocations under its CAIR rules. The expedited effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that rule actions may become effective less than 30 days after publication if the rule ''grants or recognizes an exemption or relieves a restriction'' and 5 U.S.C. 553(d)(3), which allows an effective date less than 30 days after publication ''as otherwise provided by the agency for good cause found and published with the rule.'' CAIR SIP approvals exempt states and CAIR sources within states from being subject to allowance allocation provisions in the CAIR FIPs that otherwise would apply, allowing States to make their own allowance allocations based on their SIP-approved State rule. The exemption from these obligations is sufficient reason to allow an expedited effective date of this rule under 5 U.S.C. 553(d)(1). In addition, Connecticut's exemption from these obligations provides good cause to make this rule effective on the date of publication of this action in the **Federal Register**, pursuant to 5 U.S.C. 553(d)(3). The purpose of the 30-day waiting period prescribed in 5 U.S.C. 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Where, as here, the final rule grants an exemption rather than imposing obligations, and where the effect of the final rule is simply to approve for federal purposes obligations that are already effective under state law, affected parties, such as the State of Connecticut and CAIR sources within the State, do not need time to adjust and prepare before the rule takes effect.

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 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), because it 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 24, 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, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: January 15, 2008.

Robert W. Varney,

Regional Administrator, EPA New England.

■ Part 52 of 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 H—Connecticut

■ 2. Section 52.370 is amended by revising paragraph (c)(80)(i)(B) and adding paragraphs (c)(86)(iii) and (c)(97) to read as follows:

§ 52.370 Identification of plan.

* * * * *

(c) * * *

(80) * * * .

(i) * * *

(B) Regulation section 22a–174–22a, ''The Nitrogen Oxides (NO_X) Budget Program'' adopted on December 15, 1998, and effective on March 3, 1999. As of January 24, 2008, Section 22a–174–22a is superseded and shall have no prospective effect. Violations of Section 22a–174–22a that occur prior to January 24, 2008 shall continue to be subject to enforcement, including on or after January 24, 2008, in accordance with applicable law.

* * * * *

(86) * * *

(iii) Section 22a–174–22b, State of Connecticut Regulation of Department of Environmental Protection Concerning The Post-2002 Nitrogen Oxides (NO_X) Budget Program, is fully enforceable up to and including April 30, 2010. As of May 1, 2010, Section 22a–174–22b is superseded and shall have no prospective effect. Violations of Section 22a–174–22b that occur prior to May 1, 2010 shall be subject to enforcement, including on or after May 1, 2010, in accordance with applicable law.

* * * * *

(97) Revisions to the State Implementation Plan submitted by the Connecticut Department of Environmental Protection on April 26, 2007 and September 12, 2007.

(i) Incorporation by reference.

(A) Regulations of Connecticut State Agencies (RCSA) section 22a–174–22c entitled ''The Clean Air Interstate Rule (CAIR) Nitrogen Oxides (NO_X) Ozone Season Trading Program,'' effective in the State of Connecticut on September 4, 2007.

■ 3. In § 52.385, Table 52.385 is amended by adding new entries to existing state citations for 22a–174–22a and 22a–174–22b; and by adding a new state citation for 22a–174–22c to read as follows:

§ 52.385 EPA-approved Connecticut regulations.

* * * * *

TABLE 52.385.—EPA-APPROVED REGULATIONS

Connecticut state citation	Title/subject	Dates		Federal Register citation	Section 52.370	Comments/description
		Date adopted by State	Date approved by EPA			
*	*	*	*	*	*	*
22a–174–22a	The Connecticut NO_X Budget Program.	9/04/07	1/24/08	[Insert **Federal Register** page number where the document begins].	(c)(97)	Repealed as of January 24, 2008. Superseded by CAIR.
*	*	*	*	*	*	*
22a–174–22b	The Connecticut Post-2002 NO_X Budget Program, as of May 1, 2010.	9/04/07	1/24/08	[Insert **Federal Register** page number where the document begins].	(c)(97)	Repealed as of May 1, 2010. Superseded by CAIR.
22a–174–22c	The Clean Air Interstate Rule (CAIR) Nitrogen Oxides (NO_X) Ozone Season Trading Program.	9/04/07	1/24/08	[Insert **Federal Register** page number where the document begins].	(c)(97)	
*	*	*	*	*	*	*

[FR Doc. E8–1183 Filed 1–23–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R02–OAR–2007–0913; FRL–8514–9]

Approval and Promulgation of Implementation Plans; New York: Clean Air Interstate Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve a revision to the New York State Implementation Plan (SIP) that addresses the requirements of EPA's Clean Air Interstate Rule (CAIR), promulgated on May 12, 2005 and subsequently revised on April 28, 2006, and December 13, 2006. EPA has determined that the SIP revision fully implements the CAIR requirements for New York. As a result of this rulemaking, EPA will also withdraw, through a separate rulemaking, the CAIR Federal Implementation Plans (CAIR FIPs) concerning sulfur dioxide (SO_2),

nitrogen oxides (NO_X) annual, and NO_X ozone season emissions for New York. The CAIR FIPs for all states in the CAIR region were promulgated on April 28, 2006 and subsequently revised on December 13, 2006. In addition, EPA is determining that the New York SIP revision satisfies New York's obligation under section 110(a)(2)(D)(i) of the Clean Air Act (CAA) to prohibit air emissions that would interfere with provisions to prevent significant deterioration of air quality.

DATES: This rule is effective on January 24, 2008.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R02–OAR–2007–0913. All documents in the docket are available online at *www.regulations.gov.* Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Fradkin, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866, phone number (212) 637–3702 or by e-mail at: *fradkin.kenneth@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. EPA's Action

A. What action is EPA approving?

EPA is taking final action to approve a revision to New York's SIP which was approved for adoption by New York's State Environmental Board on August 28, 2007 and submitted as a SIP revision on September 17, 2007. New York's revision addresses the Clean Air Interstate Rule (CAIR) and obligations under 110(a)(2)(D)(i) for the 8-hour ozone and fine particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS). New York's adoption was published in the New York Register on October 10, 2007 (Volume XXIX, Issue 41).

EPA has determined that the SIP, as revised, will meet the applicable requirements of CAIR. Parts 243, 244 and 245 of title 6 of the New York Code of Rules and Regulations (6NYCRR) constitute New York State's CAIR program. Part 243 establishes the CAIR NO_X Ozone Season Trading Program; Part 244 establishes the CAIR NO_X Annual Trading Program; and Part 245 establishes the CAIR SO_2 Trading Program.

As a result of this action, the Administrator of EPA will also issue a final rule to withdraw the FIPs concerning SO_2, NO_X annual, and NO_X ozone season emissions for New York. The Administrator's action will delete and reserve 40 CFR 52.1684 and 40 CFR 52.1685, relating to the CAIR FIP obligations for New York. The withdrawal of the CAIR FIPs for New York is a conforming amendment that must be made once the SIP is approved because EPA's authority to issue the FIPs was premised on a deficiency in the SIP for New York. Once the SIP is fully approved, EPA no longer has authority for the FIPs. Thus, EPA will not have the option of maintaining the FIPs following the full SIP approval. Accordingly, EPA does not intend to offer an opportunity for a public hearing or an additional opportunity for written public comment on the withdrawal of the FIPs.

In addition, as EPA determined in the final CAIR, EPA's conclusion that the revised SIP meets the applicable requirements of CAIR is also sufficient to demonstrate that the New York SIP satisfies the requirements in section 110(a)(2)(D)(i) of the Clean Air Act (CAA) with regard to ''significant contribution'' and ''interference with maintenance''. Section 110(a)(2)(D)(i) requires, among other things, that each state submit a SIP that prohibits any source or any other type of emission activity within a state from emitting pollutants in amounts that will: (1) contribute significantly to downwind nonattainment of the NAAQS and (2) interfere with maintenance of the NAAQS. Because EPA previously determined in the CAIR that states will meet these two obligations by complying with the applicable CAIR requirements, EPA is not taking any final action in this notice with regard to the ''significant contribution'' and ''interference with maintenance'' obligations in section 110(a)(2)(D)(i).

Section 110(a)(2)(D)(i) also contains requirements related to emissions that interfere with the prevention of significant deterioration of air quality (PSD) and visibility protection, and CAIR did not address states' obligations with respect to these two requirements. In today's action, EPA is taking final action to determine that the New York SIP satisfies the CAA 110(a)(2)(D)(i) requirement that each state is to submit a SIP that prohibits any source or any other type of emission activity within a state from emitting pollutants in amounts that will interfere with provisions to prevent significant deterioration of air quality. EPA is taking no action to determine whether the New York SIP satisfies the visibility protection requirements in 110(a)(2)(D)(i) of the CAA because it is not possible at this time for New York to accurately determine whether there is interference with measures in another state's SIP to protect visibility. New York will need to address the visibility protection requirements once the regional haze SIP is completed and submitted to EPA.

B. When did EPA propose to approve New York's SIP revision?

EPA proposed to approve New York's request to amend the SIP on October 1, 2007 (72 FR 55723). The comment period closed on October 31, 2007. One comment was received and is addressed in Section I.C. below.

C. What are the public comments on EPA's proposal?

The following is a summary of the comments received on the proposed rule published on October 1, 2007 (72 FR 55723), and EPA's response.

Comment: On October 30, 2007, the Connecticut Department of Environmental Protection (CTDEP) submitted adverse comments on EPA's proposed rule to approve New York's CAIR SIP. CTDEP indicates that the State is encouraged by the efforts of New York and other states to adopt programs to meet the emission reduction requirements of CAIR, and urges EPA approval. However, it argues that before approving state plans with respect to CAA 110(a)(2)(D), EPA should evaluate individually and in the aggregate each state's clean air programs. They argue such evaluation is necessary to ensure that each state's emissions do not significantly contribute to ozone nonattainment in Connecticut or any other state. CTDEP expresses concern that EPA is determining through this and other

similar rulemakings that CAIR programs are sufficient to meet states' section 110(a)(2)(D)(i) obligations. CTDEP asserts, based on EPA and State modeling for CAIR, that the levels of transported pollution remaining after CAIR implementation are large enough that, even with local controls, it may be difficult for Connecticut to attain the 8-hour ozone NAAQS by 2010. Finally, CTDEP questions EPA's determination that highly cost effective controls are adequate to address states' section 110(a)(2)(D)(i) obligations as compared to ''reasonable cost'' controls that could be achieved to effect more stringent NO_X reductions.

Response: EPA does not agree that it is appropriate or necessary for EPA to conduct additional analysis before approving the New York CAIR SIP revision. Under this SIP revision, New York has chosen to participate in the EPA administered cap-and-trade program for SO_2, NO_X annual, and NO_X ozone season emissions. EPA has evaluated this SIP revision and has determined that it complies with the applicable requirements in 40 CFR 51.123(o) and (aa), with regard to NO_X annual and NO_X ozone season emissions, and 40 CFR 51.124(o), with regard to SO_2 emissions. CTDEP does not challenge this determination. Thus, CTDEP's comments do not specifically pertain to any aspect of EPA's proposed action to approve New York's CAIR SIP revision. Rather, the comments appear to be directed broadly at EPA's decisions with regard to states' section 110(a)(2)(D)(i) obligations. These decisions were made by EPA in the context of the CAIR rulemaking, which was promulgated on May 12, 2005 (70 FR 25162), not in the proposed action to approve New York's CAIR SIP revision. Therefore, CTDEP's comments are not relevant to the proposed action. CTDEP had ample opportunity to submit comments both during the comment period for the proposed CAIR rulemaking of January 30, 2004 (69 FR 4566) and during the comment period for the proposed CAIR FIP of August 24, 2005 (70 FR 49708). EPA's proposal to approve New York's CAIR SIP did not reopen either the CAIR or CAIR FIP rulemakings. Consequently, CTDEP's comments are not relevant to this rulemaking, or timely with respect to the CAIR and CAIR FIP rulemakings. Thus, EPA does not believe it is necessary to conduct additional analysis on whether New York or any other state satisfies the requirements of 110(a)(2)(D) before approving the New York CAIR SIP submission.

D. Where is additional information available on EPA's action?

A detailed analysis of New York's SIP submittal pertaining to New York's CAIR program and the requirements of section 110(a)(2)(D)(i) of the CAA is available in the October 1, 2007 Proposed Rulemaking (72 FR 55723). A copy of the rulemaking is available in the EPA docket.

II. Conclusion

EPA is taking final action to approve New York's full CAIR SIP revision submitted on September 17, 2007. Under this SIP revision, New York is choosing to participate in the EPA administered cap-and-trade program for SO_2, NO_X annual, and NO_X ozone season emissions. The SIP revision meets the applicable requirements in 40 CFR 51.123(o) and (aa), with regard to NO_X annual and NO_X ozone season emissions, and 40 CFR 51.124(o), with regard to SO_2 emissions. The revision includes three emission cap-and-trade rules, 6 NYCRR Parts 243, 244, and 245, effective on October 19, 2007, which implement the State's CAIR Cap-and-Trade Programs in New York. EPA has determined that the SIP, as revised, will meet the requirements of CAIR. The Administrator of EPA has also issued a direct final rule to automatically withdraw the CAIR FIPs concerning SO_2, NO_X annual, and NO_X ozone season emissions for New York State upon the effective date of EPA's approval of a full state SIP revision that meets the requirements of CAIR. This action will delete and reserve 40 CFR 52.1684 and 40 CFR 52.1685.

In addition, EPA is also taking final action to determine that the New York SIP satisfies the requirement in section 110(a)(2)(D)(i) of the Clean Air Act (CAA) that requires each state to submit a SIP that prohibits any source or any other type of emission activity within a state from emitting pollutants in amounts that will interfere with provisions to prevent significant deterioration of air quality. EPA is not taking action to determine whether the New York SIP satisfies the 110(a)(2)(D)(i) requirement regarding visibility protection. This requirement will be re-evaluated after regional haze SIPs are completed and approved by EPA.

III. When Is This Action Effective?

EPA finds that there is good cause for this approval to become effective on January 24, 2008, because a delayed effective date is unnecessary due to the nature of the approval, which allows the State to implement the State's CAIR Cap-and-Trade Programs in New York. The expedited effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that rule actions may become effective less than 30 days after publication if the rule ''grants or recognizes an exemption or relieves a restriction'' and section 5 U.S.C. 553(d)(3), which allows an effective date less than 30 days after publication ''as otherwise provided by the agency for good cause found and published with the rule.'' CAIR SIP approvals relieve states and CAIR sources within states from being subject to allowance allocation provisions in the CAIR FIPs that otherwise would apply to them, allowing States to make their own allowance allocations based on their SIP-approved State rule. The relief from these obligations is sufficient reason to allow an expedited effective date of this rule under 5 U.S.C. 553(d)(1). In addition, New York's relief from these obligations provides good cause to make this rule effective on January 24, 2008, pursuant to 5 U.S.C. 553(d)(3). The purpose of the 30-day waiting period prescribed in 5 U.S.C. 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Where, as here, the final rule relieves obligations rather than imposes obligations, affected parties, such as the State of New York and CAIR sources within the State, do not need time to adjust and prepare before the rule takes effect.

IV. 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 would impose no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule would not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this action approves pre-existing requirements under state law and would 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 would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it would 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 will result, as a consequence of that approval, in the Administrator's withdrawal of the CAIR FIP. It 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 would approve 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 would not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 24, 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, Electric utilities, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: December 31, 2007.

Alan J. Steinberg,

Regional Administrator, Region 2.

■ 40 CFR part 52 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 HH—New York

■ 2. Section 52.1670 is amended by adding new paragraph (c)(113) to read as follows:

§ 52.1670 Identification of plans.

* * * * *

(c) * * *

(113) A revision to the State Implementation Plan that was submitted on September 17, 2007 by the New York State Department of Environmental Conservation (NYSDEC). This revision consists of regulations to meet the requirements of the Clean Air Interstate Rule (CAIR). This revision also addresses New York's 110(a)(2)(D)(i) obligations to submit a SIP revision that contains adequate provisions to prohibit air emissions from adversely affecting another state's air quality through interstate transport.

(i) Incorporation by reference:

(A) Part 243, CAIR NO_X Ozone Season Trading Program, Part 244, CAIR NO_X Annual Trading Program, and Part 245, CAIR SO_2 Trading Program, effective on October 19, 2007, of Title 6 of the New York Code of Rules and Regulations (NYCRR).

(B) Notice of Adoption, New York State Clean Air Interstate Rule, addition of Parts 243, 244 and 245 to Title 6 NYCRR, New York State Register, dated October 10, 2007, pages 16–22.

(ii) Additional information:

(A) Letter dated September 14, 2007 from Assistant Commissioner J. Jared Snyder, NYSDEC, to Alan J. Steinberg, RA, EPA Region II, submitting the SIP revision.

■ 3. In § 52.1679, the table is amended by adding under Title 6 entries for Parts 243, 244, and 245 in numerical order to read as follows:

§ 52.1679 EPA—approved New York State regulations.

State regulation	State effective date	EPA approved date	Comments
Title 6			
* * *	*	*	* *
Part 243, CAIR NO_X Ozone Season Trading Program	10/19/07	1/24/08, [Insert FR page citation].	
Part 244, CAIR NO_X Annual Trading Program	10/19/07	1/24/08, [insert FR page citation].	
Part 245, CAIR SO_2 Trading Program	10/19/07	1/24/08, [insert FR page citation].	
* * *	*	*	* *

[FR Doc. E8–802 Filed 1–23–08; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–203; FCC 01–306]

Ancillary or Supplementary Use of Digital Television Capacity by Noncommercial Licensees

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: The Federal Communications Commission adopted rules concerning the provision of ancillary and supplementary services by noncommercial educational television licensees. The changes to the rules require Office of Management and Budget (OMB) approval to become effective. This document announces that the Commission has received OMB approval for these rules.

DATES: The changes to the rules published on November 26, 2001, 66 FR 58982, amending 47 CFR 73.624(g)(2)(i) are effective January 24, 2008.

FOR FURTHER INFORMATION CONTACT: For information on this proceeding, contact Kim Matthews, *kim.matthews@fcc.gov,* (202) 418–2154, of the Federal Communications Commission, Media Bureau. Questions concerning the OMB control number should be directed to Cathy Williams, Federal Communications Commission, (202) 418–2918, *cathy.williams@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Federal Communications Commission has received OMB approval for the rule changes published at 66 FR 58982, November 26, 2001. Through this document, the Commission announces that it received this approval on July 7, 2003.

In a Report and Order, released on October 17, 2001, and published in the **Federal Register** on November 26, 2001, 66 FR 58982, the Federal Communications Commission adopted rules that contained information collection requirements subject to the Paperwork Reduction Act. On July 7, 2003, the Office of Management and Budget approved the information collection requirements contained in 47 CFR 73.624(g)(2)(i). This information collection is assigned OMB Control Number 3060–0906. This publication satisfies the requirement that the Commission publish a document announcing the effective date of the rule changes requiring OMB approval.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–1163 Filed 1–23–08; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 204 and 225

Defense Federal Acquisition Regulation Supplement; Technical Amendments

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is making technical amendments to the Defense Federal Acquisition Regulation Supplement (DFARS) to update an office symbol and a cross-reference.

DATES: *Effective Date:* January 24, 2008.

FOR FURTHER INFORMATION CONTACT: Ms. Michele Peterson, Defense Acquisition Regulations System, OUSD(AT&L)DPAP(DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone 703–602–0311; facsimile 703–602–7887.

SUPPLEMENTARY INFORMATION: This final rule amends DFARS text as follows:

○ *Section 204.7005.* Updates the office symbol for the Defense Logistics Agency order code monitor.

○ *Section 225.103.* Updates a cross-reference.

List of Subjects in 48 CFR Parts 204 and 225

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR Parts 204 and 225 are amended as follows:

■ 1. The authority citation for 48 CFR parts 204 and 225 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 204—ADMINISTRATIVE MATTERS

204.7005 [Amended]

■ 2. Section 204.7005 is amended in paragraph (c), in the entry ''Defense Logistics Agency'', by removing ''(J–3311)'' and adding in its place ''(J71)''.

PART 225—FOREIGN ACQUISITION

225.103 [Amended]

■ 3. Section 225.103 is amended in paragraph (a)(ii)(B) introductory text, by removing ''225.872–4(b)'' and adding in its place ''PGI 225.872–4''.

[FR Doc. E8–1102 Filed 1–23–08; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 204 and 244

RIN 0750–AF61

Defense Federal Acquisition Regulation Supplement; Closeout of Contract Files (DFARS Case 2006–D045)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to remove text addressing DoD procedures for closeout of contract files. Text on this subject has been relocated to the DFARS companion resource, Procedures, Guidance, and Information.

DATES: *Effective Date:* January 24, 2008.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Tronic, Defense Acquisition Regulations System, OUSD(AT&L)DPAP(DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone 703–602–0289; facsimile 703–602–7887. Please cite DFARS Case 2006–D045.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule revises DFARS 204.804 to remove text addressing DoD procedures for closeout of contract files. Text on this subject has been relocated to the DFARS companion resource, Procedures, Guidance, and Information (PGI), at *http://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html.* In addition, the rule amends DFARS 244.304 to clarify an existing reference to corresponding PGI text.

DoD published a proposed rule at 72 FR 14256 on March 27, 2007. DoD received no comments on the proposed rule. Therefore, DoD has adopted the proposed rule as a final rule without change.

This rule was not subject to Office of Management and Budget review under

Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule pertains to administrative procedures for contract closeout functions performed by the Government.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 204 and 244

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR parts 204 and 244 are amended as follows:

■ 1. The authority citation for 48 CFR parts 204 and 244 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 204—ADMINISTRATIVE MATTERS

■ 2. Section 204.804 is revised to read as follows:

204.804 Closeout of contract files.

Contracting officers shall close out contracts in accordance with the procedures at PGI 204.804. The closeout date for file purposes shall be determined and documented by the procuring contracting officer.

204.804–1 and 204.804–2 [Removed]

■ 3. Sections 204.804–1 and 204.804–2 are removed.

PART 244—SUBCONTRACTING POLICIES AND PROCEDURES

■ 4. Section 244.304 is amended in paragraph (b) by revising the second sentence to read as follows:

244.304 Surveillance.

(b) * * * See PGI 244.304(b) for guidance on how weaknesses may arise and may be discovered.

[FR Doc. E8–1093 Filed 1–23–08; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 207 and 212

RIN 0750–AF78

Defense Federal Acquisition Regulation Supplement; Commercial Item Determinations (DFARS Case 2007–D005)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to address requirements for DoD contracting officers to ensure that an item meets the definition of ''commercial item'' specified in the Federal Acquisition Regulation (FAR), when using commercial item procedures for acquisitions exceeding $1 million in value.

DATES: *Effective Date:* January 24, 2008.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Benavides, Defense Acquisition Regulations System, OUSD(AT&L)DPAP(DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone 703–602–1302; facsimile 703–602–7887. Please cite DFARS Case 2007–D005.

SUPPLEMENTARY INFORMATION:

A. Background

FAR Part 12, Acquisition of Commercial Items, applies to the acquisition of supplies or services that meet the definition of ''commercial item'' in FAR 2.101. To emphasize the applicability of FAR Part 12, this DFARS rule specifies that, when using FAR Part 12 procedures for acquisitions exceeding $1 million in value, the contracting officer must determine in writing that the acquisition meets the commercial item definition in FAR 2.101, and the contracting officer must include the written determination in the contract file.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This rule will not have a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of DoD. Therefore, publication for public comment under 41 U.S.C. 418b is not required. However, DoD will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 2007–D005.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 207 and 212

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR parts 207 and 212 are amended as follows:

■ 1. The authority citation for 48 CFR parts 207 and 212 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 207—ACQUISITION PLANNING

■ 2. Section 207.102 is added to read as follows:

207.102 Policy.

(a)(1) See 212.102 regarding requirements for a written determination that the commercial item definition has been met when using FAR Part 12 procedures.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

■ 3. Subpart 212.1 is added to read as follows:

Subpart 212.1—Acquisition of Commercial Items—General

212.102 Applicability.

(a)(i) When using FAR Part 12 procedures for acquisitions exceeding $1 million in value, the contracting officer shall—

(A) Determine in writing that the acquisition meets the commercial item definition in FAR 2.101; and

(B) Include the written determination in the contract file.

(ii) Follow the procedures at PGI 212.102(a) regarding file documentation.

[FR Doc. E8–1121 Filed 1–23–08; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 212, 222, and 252

RIN 0750–AF11

Defense Federal Acquisition Regulation Supplement; Combating Trafficking in Persons (DFARS Case 2004–D017)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to remove text addressing prohibitions on contractor activities involving trafficking in persons. The DFARS text is no longer necessary, since policy on this subject has been added to the Federal Acquisition Regulation (FAR).

DATES: *Effective Date:* January 24, 2008.

FOR FURTHER INFORMATION CONTACT: Ms. Felisha Hitt, Defense Acquisition Regulations System, OUSD(AT&L)DPAP(DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone 703–602–0310; facsimile 703–602–7887. Please cite DFARS Case 2004–D017.

SUPPLEMENTARY INFORMATION:

A. Background

DoD published an interim rule at 71 FR 62560 on October 26, 2006, adding DFARS Subpart 222.17 and a corresponding contract clause at DFARS 252.222–7006, to implement DoD policy prohibiting DoD contractors from engaging in activities that support or promote trafficking in persons. The DFARS text is no longer necessary, as a result of the FAR rule published at 72 FR 46335 on August 17, 2007. The FAR rule addresses Governmentwide zero tolerance policy with regard to trafficking in persons, and includes a contract clause for use in all solicitations and contracts. Therefore, this final rule removes the DFARS text published on October 26, 2006, except for references to internal DoD procedures regarding the combating of trafficking in persons.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule removes DFARS text that has become obsolete as a result of changes that have been made to the FAR.

C. Paperwork Reduction Act

This final rule eliminates the information collection requirements previously approved by the Office of Management and Budget under Control Number 0704–0440.

List of Subjects in 48 CFR Parts 212, 222, and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR parts 212, 222, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 212, 222, and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

212.301 [Amended]

■ 2. Section 212.301 is amended as follows:

■ a. By removing paragraph (f)(x); and

■ b. By redesignating paragraphs (f)(xi) through (f)(xiii) as paragraphs (f)(x) through (f)(xii) respectively.

PART 222—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

222.1700 through 222.1702 [Removed]

■ 3. Sections 222.1700 through 222.1702 are removed.

■ 4. Sections 222.1703 and 222.1704 are revised to read as follows:

222.1703 Policy.

See PGI 222.1703 for additional information regarding DoD policy for combating trafficking in persons outside the United States.

222.1704 Violations and remedies.

Follow the procedures at PGI 222.1704 for notifying the Combatant Commander if a violation occurs.

222.1704–70 and 222.1705 [Removed]

■ 5. Sections 222.1704–70 and 222.1705 are removed.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.222–7006 [Removed]

■ 6. Section 252.222–7006 is removed.

[FR Doc. E8–1120 Filed 1–23–08; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 225

RIN 0750–AF89

Defense Federal Acquisition Regulation Supplement; Trade Agreements—New Thresholds (DFARS Case 2007–D023)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to incorporate increased dollar thresholds for application of the World Trade Organization Government Procurement Agreement and the Free Trade Agreements, as determined by the United States Trade Representative.

DATES: *Effective date:* January 24, 2008.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before March 24, 2008, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2007–D023, using any of the following methods:

○ *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

○ *E-mail: dfars@osd.mil.* Include DFARS Case 2007-D023 in the subject line of the message.

○ *Fax:* 703–602–7887.

○ *Mail:* Defense Acquisition Regulations System, Attn: Ms. Amy Williams, OUSD(AT&L)DPAP(DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062.

○ *Hand Delivery/Courier:* Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, 703–602–0328.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule amends the clause prescriptions at DFARS 225.1101 and 225.7503 to reflect increased dollar thresholds for application of the trade agreements. Every two years, the trade agreements thresholds are escalated according to a pre-determined formula set forth in the agreements. The United States Trade Representative has specified the following new thresholds, as published at 72 FR 71166 on December 14, 2007, and corrected at 72 FR 73904 on December 28, 2007:

Trade agreement	Supply contract (equal to or exceeding)	Construction contract (equal to or exceeding)
World Trade Organization Government Procurement Agreement	$194,000	$7,443,000
Free Trade Agreements:		
Australia Free Trade Agreement	67,826	7,443,000
Bahrain Free Trade Agreement	194,000	8,817,449
Dominican Republic-Central America-United States Free Trade Agreement (El Salvador, Dominican Republic, Guatemala, Honduras, and Nicaragua)	67,826	7,443,000
Chile Free Trade Agreement	67,826	7,443,000
Morocco Free Trade Agreement	194,000	7,443,000
North American Free Trade Agreement:		
Canada	$25,000	8,817,449
Mexico	67,826	8,817,449
Singapore Free Trade Agreement	67,826	7,443,000

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the trade agreement threshold changes are designed to keep pace with inflation and thus maintain the status quo. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2007–D023.

C. Paperwork Reduction Act

This rule affects the certification and information collection requirements in the provisions at DFARS 252.225–7020 and 252.225–7035, currently approved under Office of Management and Budget Control Number 0704–0229. The impact, however, is negligible. The dollar threshold changes are in line with inflation and maintain the status quo.

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense, that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule incorporates increased dollar thresholds for application of the World Trade Organization Government Procurement Agreement and the Free Trade Agreements, as determined by the United States Trade Representative. The increased thresholds became effective on January 1, 2008. Comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Part 225

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR part 225 is amended as follows:

PART 225—FOREIGN ACQUISITION

■ 1. The authority citation for 48 CFR part 225 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

225.1101 [Amended]

■ 2. Section 225.1101 is amended as follows:

■ a. In paragraph (10)(i) introductory text by removing ''$193,000'' and adding in its place ''$194,000''; and

■ b. In paragraphs (10)(i)(A) and (B) by removing ''$64,786'' and adding in its place ''$67,826''.

■ 3. Section 225.7503 is amended as follows:

■ a. In paragraph (a) by removing ''$7,407,000'' and adding in its place ''$7,443,000''; and

■ b. By revising paragraph (b) to read as follows:

225.7503 Contract clauses.

* * * * *

(b) Use the clause at 252.225–7045, Balance of Payments Program—Construction Material Under Trade Agreements, in solicitations and contracts for construction to be performed outside the United States with a value of $7,443,000 or more. For acquisitions with a value of $7,443,000 or more, but less than $8,817,449, use the clause with its Alternate I.

[FR Doc. E8–1103 Filed 1–23–08; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 232 and 252

RIN 0750–AF76

Defense Federal Acquisition Regulation Supplement; Payment Withholding—Deletion of Duplicative Text (DFARS Case 2007–D010)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to remove text addressing withholding of payments under time-and-materials and labor-hour contracts. The DFARS text is no longer necessary, since similar policy has been added to the Federal Acquisition Regulation (FAR).

DATES: *Effective Date:* January 24, 2008.

FOR FURTHER INFORMATION CONTACT: Ms. Robin Schulze, Defense Acquisition Regulations System, OUSD(AT&L)DPAP(DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone 703–602–0326; facsimile 703–602–7887. Please cite DFARS Case 2007–D010.

SUPPLEMENTARY INFORMATION:

A. Background

DFARS 232.111 and 252.232–7006 provide that, under time-and-materials and labor-contracts, there normally should be no need to withhold payment for a contractor with a record of timely submittal of a release discharging the Government from all liabilities, obligations, and claims under the contract. Similar policy was added to FAR 32.111 and 52.232–7 in the final rule published at 70 FR 43580 on July 27, 2005. Therefore, the DFARS text is no longer necessary, and sections 232.111 and 252.232–7006 are removed.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This rule will not have a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of DoD. Therefore, publication for public comment under 41 U.S.C. 418b is not required. However, DoD will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 2007–D010.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 232 and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR parts 232 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 232 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 232—CONTRACT FINANCING

232.111 [Removed]

■ 2. Section 232.111 is removed.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.232–7006 [Removed and Reserved]

■ 3. Section 252.232–7006 is removed and reserved.

[FR Doc. E8–1091 Filed 1–23–08; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 234 and 235

RIN 0750–AF79

Defense Federal Acquisition Regulation Supplement; Research and Development Contract Type Determination (DFARS Case 2006–D053)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 818 of the National Defense Authorization Act for Fiscal Year 2007. Section 818 requires DoD to modify regulations regarding the determination of contract type for major development programs to address assessment of program risk.

DATES: *Effective date:* January 24, 2008.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before March 24, 2008, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2006–D053, using any of the following methods:

○ *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

○ *E-mail: dfars@osd.mil.* Include DFARS Case 2006–D053 in the subject line of the message.

○ *Fax:* 703–602–7887.

○ *Mail:* Defense Acquisition Regulations System, Attn: Mr. Mark Gomersall, OUSD(AT&L)DPAP(DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062.

○ *Hand Delivery/Courier:* Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Gomersall, 703–602–0302.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule implements Section 818 of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109–364). Section 818 requires DoD to modify regulations regarding the determination of contract type for development programs. Such regulations must require the Milestone Decision Authority for a major defense acquisition program to select the contract type for a development program that is consistent with the level of program risk. The Milestone Decision Authority may select a fixed-price type contract, including a fixed-price incentive contract; or a cost-type contract, provided certain written determination requirements are satisfied.

The rule adds policy at DFARS 234.004 to implement the requirements of Section 818 of Public Law 109–364, applicable to major defense acquisition programs, and updates the policy at 235.006 to address requirements for other than major defense acquisition programs.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule relates to internal DoD considerations and documentation requirements relating to the selection of contract type for development programs. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2006–D053.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not

impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements Section 818 of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109–364). Section 818 requires DoD to modify regulations regarding the determination of contract type for major development programs to address requirements for selection of the contract type that is consistent with the level of program risk. Comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Parts 234 and 235

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR parts 234 and 235 are amended as follows:

■ 1. The authority citation for 48 CFR parts 234 and 235 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 234—MAJOR SYSTEM ACQUISITION

■ 2. Section 234.004 is revised to read as follows:

234.004 Acquisition strategy.

(1) See 209.570 for policy applicable to acquisition strategies that consider the use of lead system integrators.

(2) In accordance with Section 818 of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109–364), for major defense acquisition programs as defined in 10 U.S.C. 2430—

(i) The Milestone Decision Authority shall select, with the advice of the contracting officer, the contract type for a development program at the time of Milestone B approval or, in the case of a space program, Key Decision Point B approval;

(ii) The basis for the contract type selection shall be documented in the acquisition strategy. The documentation—

(A) Shall include an explanation of the level of program risk; and

(B) If program risk is determined to be high, shall outline the steps taken to reduce program risk and the reasons for proceeding with Milestone B approval despite the high level of program risk; and

(iii) If a cost-type contract is selected, the contract file shall include the Milestone Decision Authority's written determination that—

(A) The program is so complex and technically challenging that it would not be practicable to reduce program risk to a level that would permit the use of a fixed-price type contract; and

(B) The complexity and technical challenge of the program is not the result of a failure to meet the requirements of 10 U.S.C. 2366a.

PART 235—RESEARCH AND DEVELOPMENT CONTRACTING

■ 3. Section 235.006 is revised to read as follows:

235.006 Contracting methods and contract type.

(b)(i) For major defense acquisition programs as defined in 10 U.S.C. 2430—

(A) Follow the procedures at 234.004; and

(B) Notify the Under Secretary of Defense (Acquisition, Technology, and Logistics) (USD(AT&L)) of an intent not to exercise a fixed-price production option on a development contract for a major weapon system reasonably in advance of the expiration of the option exercise period.

(ii) For other than major defense acquisition programs—

(A) Do not award a fixed-price type contract for a development program effort unless—

(1) The level of program risk permits realistic pricing;

(2) The use of a fixed-price type contract permits an equitable and sensible allocation of program risk between the Government and the contractor; and

(3) A written determination that the criteria of paragraphs (b)(ii)(A)*(1)* and *(2)* of this section have been met is executed—

(i) By the USD(AT&L) if the contract is over $25 million and is for: research and development for a non-major system; the development of a major system (as defined in FAR 2.101); or the development of a subsystem of a major system; or

(ii) By the contracting officer for any development not covered by paragraph (b)(ii)(A)*(3)(i)* of this section.

(B) Obtain USD(AT&L) approval of the Government's prenegotiation position before negotiations begin, and obtain USD(AT&L) approval of the negotiated agreement with the contractor before the agreement is executed, for any action that is—

(1) An increase of more than $250 million in the price or ceiling price of a fixed-price type development contract, or a fixed-price type contract for the lead ship of a class;

(2) A reduction in the amount of work under a fixed-price type development contract or a fixed-price type contract for the lead ship of a class, when the value of the work deleted is $100 million or more; or

(3) A repricing of fixed-price type production options to a development contract, or a contract for the lead ship of a class, that increases the price or ceiling price by more than $250 million for equivalent quantities.

[FR Doc. E8–1092 Filed 1–23–08; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 080117051–8053–01]

RIN 0648–XF17

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

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

ACTION: Temporary rule.

SUMMARY: The Assistant Administrator for Fisheries (AA), NOAA, announces temporary restrictions consistent with the requirements of the Atlantic Large Whale Take Reduction Plan's (ALWTRP) implementing regulations. These regulations apply to lobster trap/pot and anchored gillnet fishermen in an area totaling approximately 2,251 nm^2 (7,720 km^2), southeast of Portsmouth, New Hampshire, for 15 days. The purpose of this action is to provide protection to an aggregation of northern right whales (right whales).

DATES: Effective beginning at 0001 hours January 26, 2008, through 2400 hours February 9, 2008.

ADDRESSES: Copies of the proposed and final Dynamic Area Management (DAM) rules, Environmental Assessments (EAs), Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, and progress reports on

implementation of the ALWTRP may also be obtained by writing Diane Borggaard, NMFS/Northeast Region, One Blackburn Drive, Gloucester, MA 01930.

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

SUPPLEMENTARY INFORMATION:

Electronic Access

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

Background

The ALWTRP was developed pursuant to section 118 of the Marine Mammal Protection Act (MMPA) to reduce the incidental mortality and serious injury of three endangered species of whales (right, fin, and humpback) due to incidental interaction with commercial fishing activities. In addition, the measures identified in the ALWTRP would provide conservation benefits to a fourth species (minke), which are neither listed as endangered nor threatened under the Endangered Species Act (ESA). The ALWTRP, implemented through regulations codified at 50 CFR 229.32, relies on a combination of fishing gear modifications and time/area closures to reduce the risk of whales becoming entangled in commercial fishing gear (and potentially suffering serious injury or mortality as a result).

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

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

On January 13, 2008, an aerial survey reported two aggregations of right whales, totaling seven individuals: four whales in the proximity of 42° 37′ N. latitude and 70° 01′ W. longitude, and three whales in the proximity of 42° 51′ N. latitude and 70° 04′ W. longitude. These positions lie northeast of Boston, Massachusetts, and southeast of Portsmouth, New Hampshire, respectively. After conducting an investigation, NMFS ascertained that the report came from a qualified individual and determined that the report was reliable. Thus, NMFS has received a reliable report from a qualified individual of the requisite right whale density to trigger the DAM provisions of the ALWTRP.

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

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

The DAM Zone is bound by the following coordinates:

43° 09′ N., 70° 29′ W. (NW Corner)
43° 09′ N., 69° 39′ W.
42° 56′ N., 69° 39′ W.
42° 56′ N., 69° 33′ W.
42° 16′ N., 69° 33′ W.
42° 16′ N., 70° 33′ W.
42° 56′ N., 70° 33′ W.
42° 56′ N., 70° 29′ W.
43° 09′ N., 70° 29′ W. (NW Corner)

In addition to those gear modifications currently implemented under the ALWTRP at 50 CFR 229.32, the following gear modifications are required in the DAM zone. If the requirements and exceptions for gear modification in the DAM zone, as described below, differ from other ALWTRP requirements for any overlapping areas and times, then the more restrictive requirements will apply in the DAM zone.

Lobster Trap/pot Gear

Fishermen utilizing lobster trap/pot gear within the portions of Northern Nearshore Lobster Waters, Northern Inshore State Lobster Waters, and the Stellwagen Bank/Jeffrey's Ledge Restricted Area that overlap with the DAM zone are required to utilize all of the following gear modifications while the DAM zone is in effect:

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

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

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

Anchored Gillnet Gear

Fishermen utilizing anchored gillnet gear within the portions of Other Northeast Gillnet Waters and the

Stellwagen Bank/Jeffrey's Ledge Restricted Area that overlap with the DAM zone are required to utilize all the following gear modifications while the DAM zone is in effect:

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;
2. All buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;
3. Fishermen are allowed to use two buoy lines per string;
4. The breaking strength of each net panel weak link must not exceed 1,100 lb (498.8 kg). The weak link requirements apply to all variations in net panel size. One weak link must be placed in the center of the floatline and one weak link must be placed in the center of each of the up and down lines at both ends of the net panel. Additionally, one weak link must be placed as close as possible to each end of the net panels on the floatline; or, one weak link must be placed between floatline tie-loops between net panels and one weak link must be placed where the floatline tie-loops attach to the bridle, buoy line, or groundline at each end of a net string;
5. A weak link with a maximum breaking strength of 1,100 lb (498.8 kg) must be placed at all buoys; and
6. All anchored gillnets, regardless of the number of net panels, must be securely anchored with the holding power of at least a 22 lb (10.0 kg) Danforth-style anchor at each end of the net string.

The restrictions will be in effect beginning at 0001 hours January 26, 2008, through 2400 hours February 9, 2008, unless terminated sooner or extended by NMFS through another notification in the **Federal Register**.

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

Classification

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

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

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

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

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

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

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

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

Dated: January 17, 2008.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. 08–262 Filed 1–18–08; 2:32 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 73, No. 16
Thursday, January 24, 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.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0056; Directorate Identifier 2007–CE–096–AD]

RIN 2120–AA64

Airworthiness Directives; APEX Aircraft Model CAP 10 B 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:

A CAP 10B experienced an emergency landing after its front fuel tank collapsed and rendered inoperative the left rudder pedals which were blocked in neutral position. Investigation and the metallurgical examination revealed that the fuel tank straps had fractured as a result of fatigue. The tank support straps had logged around 7000 hours time-in-service (TIS).

DGAC France Airworthiness Directive (AD) F–2004–071 was issued to introduce a 4000 hour life-limit for the tank support straps and to require replacement of straps which had exceeded this life-limit.

Since then, a front tank support has been found damaged during an inspection before reaching 4000 hours TIS.

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 25, 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: Sarjapur Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4145; 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–2008–0056; Directorate Identifier 2007–CE–096–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 EASA AD No.: 2007–0285, dated November 13, 2007 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

A CAP 10B experienced an emergency landing after its front fuel tank collapsed and rendered inoperative the left rudder pedals which were blocked in neutral position. Investigation and the metallurgical examination revealed that the fuel tank straps had fractured as a result of fatigue. The tank support straps had logged around 7000 hours time-in-service (TIS).

DGAC France Airworthiness Directive (AD) F–2004–071 was issued to introduce a 4000 hour life-limit for the tank support straps and to require replacement of straps which had exceeded this life-limit.

Since then, a front tank support has been found damaged during an inspection before reaching 4000 hours TIS.

The present AD supersedes DGAC France AD F–2004–071, reduces to 2000 hours the life-limit for the tank support straps and requires replacement of straps which have exceeded the new life-limit.

These actions are intended to address the identified unsafe condition so as to prevent fatigue cracks from occurring in the tank support straps before the established safe life is reached.

The MCAI requires the life-limit of the front fuel tank strap be reduced from 4,000 hours TIS to 2,000 hours TIS and the replacement of front fuel tank straps that have exceeded the new life-limit.

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

Relevant Service Information

APEX Aircraft has issued Service Bulletin No. 040102 R1, Revision 1, dated September 18, 2007. 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 31 products of U.S. registry. We also estimate that it would take about 19 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 $65 per product.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $49,135, or $1,585 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:

Apex Aircraft: Docket No. FAA–2008–0056; Directorate Identifier 2007–CE–096–AD.

Comments Due Date

(a) We must receive comments by February 25, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to CAP 10 B airplanes, all serial numbers, certificated in any category.

Subject

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

Reason

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

A CAP 10B experienced an emergency landing after its front fuel tank collapsed and rendered inoperative the left rudder pedals which were blocked in neutral position. Investigation and the metallurgical examination revealed that the fuel tank straps had fractured as a result of fatigue. The tank support straps had logged around 7000 hours time-in-service (TIS). DGAC France Airworthiness Directive (AD) F–2004–071 was issued to introduce a 4000 hour life-limit for the tank support straps and to require replacement of straps which had exceeded this life-limit. Since then, a front tank support has been found damaged during an inspection before reaching 4000 hours TIS. The present AD supersedes DGAC France AD F–2004–071, reduces to 2000 hours the life-limit for the tank support straps and requires replacement of straps which have exceeded the new life-limit. These actions are intended to address the identified unsafe condition so as to prevent fatigue cracks from occurring in the tank support straps before the established safe life is reached.

The MCAI requires the life-limit of the front fuel tank strap be reduced from 4,000 hours TIS to 2,000 hours TIS and the replacement of front fuel tank straps that have exceeded the new life-limit.

Actions and Compliance

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

(1) When you accumulate a total of 2,000 hours TIS on the strap or within the next 30 days after the effective date of this AD, whichever occurs later, replace the front fuel tank support strap, part number (P/N) CAP 10–70–08–01, using the instructions in the maintenance manual.

(2) Repetitively thereafter within intervals not to exceed 2,000 hours TIS on the strap replace the front fuel tank support strap, P/N CAP 10–70–08–01, using the instructions in the maintenance manual.

(3) If you are unable to establish the accumulated hours TIS on the front fuel tank support strap, P/N CAP 10–70–08–01, you must use the total hours TIS accumulated on the airplane for the accumulated hours TIS on the strap.

(4) Within the next 30 days after the effective date of this AD update the airworthiness limitations section of your maintenance program to reflect the life limit change of P/N CAP 10–70–08–01 from 4,000 hours TIS to 2,000 hours TIS using APEX Aircraft Service Bulletin No. 040102 R1, Revision 1, dated September 18, 2007.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: The FAA has established a more universal compliance time for all airplanes. This gives all owners/operators at least 30 days to comply with the AD.

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:* Sarjapur Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106–; *telephone:* (816) 329–4145; *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 AD No.: 2007–0285, dated November 13, 2007; and APEX Aircraft Service Bulletin No. 040102 R1, Revision 1, dated September 18, 2007, for related information.

Issued in Kansas City, Missouri, on January 16, 2008.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–1161 Filed 1–23–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0057; Directorate Identifier 2007–CE–102–AD]

RIN 2120–AA64

Airworthiness Directives; APEX Aircraft Model CAP 10 B 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:

A case of loose bond (ungluing) of one mounting wooden block of the control stick base cover, found during the cover reinstallation, was reported to the Type Certificate Holder (TCH) and led to the issuance of the ''recommended'' Service Bulletin (SB) No. 031004 in February 2004. Since that date, other similar occurrences have been reported. This SB in its revision 1, has therefore been reclassified ''mandatory'' by the TCH.

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 25, 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: Sarjapur Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4145; 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–2008–0057; Directorate Identifier 2007–CE–102–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 EASA AD No.: 2007–0296, dated December 7, 2007 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

A case of loose bond (ungluing) of one mounting wooden block of the control stick base cover, found during the cover reinstallation, was reported to the Type Certificate Holder (TCH) and led to the issuance of the ''recommended'' Service Bulletin (SB) No. 031004 in February 2004. Since that date, other similar occurrences have been reported. This SB in its revision 1, has therefore been reclassified ''mandatory'' by the TCH.

This Airworthiness Directive (AD) mandates inspection of the mounting blocks of the control stick base cover for loose bonds and repair, as necessary.

These actions are intended to address the identified unsafe condition so as to prevent separation of the mounting blocks from the wing spar which could result in restricted movement of the ailerons and elevators with possible partial or complete loss of controls.

The MCAI requires an inspection of the four mounting wooden blocks of the control stick base cover. You are to take corrective action by repairing any loose blocks where inspection indicates necessary.

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

Relevant Service Information

APEX Aircraft has issued service bulletin No. 031004 R1, Revision 1, dated November 12, 2007. 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 52 products of U.S. registry. We also estimate that it would take about .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 $135 per product.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $9,100, or $175 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:

APEX Aircraft: Docket No. FAA–2008–0057; Directorate Identifier 2007–CE–102–AD.

Comments Due Date

(a) We must receive comments by February 25, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the following CAP 10 B airplanes that are certificated in any category:

(i) serial numbers 300 through 310; and

(ii) serial numbers 1 through 40 that have been retrofitted with carbon/wood wing reference 5702–0104048*

(*with or without a variable letter or number at the reference end).

Subject

(d) Air Transport Association of America (ATA) Code 57: Wings.

Reason

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

A case of loose bond (ungluing) of one mounting wooden block of the control stick base cover, found during the cover reinstallation, was reported to the Type Certificate Holder (TCH) and led to the issuance of the ''recommended'' Service Bulletin (SB) No. 031004 in February 2004. Since that date, other similar occurrences have been reported. This SB in its revision 1, has therefore been reclassified ''mandatory'' by the TCH.

This Airworthiness Directive (AD) mandates inspection of the mounting blocks of the control stick base cover for loose bonds and repair, as necessary.

These actions are intended to address the identified unsafe condition so as to prevent separation of the mounting blocks from the wing spar which could result in restricted movement of the ailerons and elevators with possible partial or complete loss of controls.

The MCAI requires an inspection of the four mounting wooden blocks of the control stick base cover. You are to take corrective action by repairing any loose blocks where inspection indicates necessary.

Actions and Compliance

(f) Unless already done, do the following actions within the next 6 months after the effective date of this AD, following APEX Aircraft Service Bulletin No. 031004 R1, Revision 1, dated November 12, 2007:

(1) Inspect the four mounting wooden blocks of the control stick base cover for loose bonding (gluing); and

(2) If any wooden block is found to be loose, take corrective action.

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: Sarjapur Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4145; 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 AD No.: 2007–0296, dated December 7, 2007; and APEX Aircraft Service Bulletin (SB) No. 031004 R1, Revision 1, dated November 12, 2007, for related information.

Issued in Kansas City, Missouri, on January 16, 2008.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–1164 Filed 1–23–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0047; Directorate Identifier 2007–NM–295–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to certain Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 400) airplanes. The existing AD currently requires revising the airworthiness limitations section of the Instructions for Continued Airworthiness of the maintenance requirements manual (MRM) by incorporating procedures for repetitive functional tests of the pilot input lever of the pitch feel simulator (PFS) units. That AD also requires new repetitive functional tests of the pilot input lever of the PFS unit, and corrective actions if necessary; and after initiating the new tests, requires removal of the existing procedures for the repetitive functional tests from the MRM. This new action would require revised procedures for the functional tests. This proposed AD results from a report that the shear pin located in the input lever of two PFS units failed due to fatigue. We are proposing this AD to prevent undetected failure of the shear pins of both PFS units simultaneously, which could result in loss of pitch feel forces and consequent reduced control of the airplane.

DATES: We must receive comments on this proposed AD by February 25, 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 Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada.

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: Dan Parrillo, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, New York Aircraft Certification Office, FAA, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone 516–228–7305; fax 516–794–5531.

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–2008–0047; Directorate Identifier 2007–NM–295–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

On March 21, 2006, we issued AD 2006–05–11 R1, amendment 39–14528 (71 FR 15323, March 28, 2006), for certain Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 400) airplanes. That AD requires revising the airworthiness limitations section of the Instructions for Continued Airworthiness of the maintenance requirements manual (MRM) by incorporating procedures for repetitive functional tests of the pilot input lever of the pitch feel simulator (PFS) units. That AD also requires new repetitive functional tests of the pilot input lever of the PFS unit, and corrective actions if necessary; and after initiating the new tests, requires removal of the existing procedures for the repetitive functional tests from the MRM. That AD resulted from a report that the shear pin located in the input lever of two PFS units failed due to fatigue. We issued that AD to prevent undetected failure of the shear pin of both PFS units simultaneously, which could result in loss of pitch feel forces and consequent reduced control of the airplane.

Relevant Service Information

AD 2006–05–11 R1 cited Bombardier Alert Service Bulletin A601R–27–144, Revision A, dated February 14, 2006, as the appropriate source of service information for the functional tests and associated corrective actions and reporting requirements. Since we issued that AD, Bombardier has revised the service bulletin. Revision B, dated December 20, 2006, revises the column check procedures by specifying ambient temperature conditions for performing the check. Remaining actions are unchanged.

Revision B of the service bulletin contains an additional requirement. So we must supersede AD 2006–05–11 R1 to require the revised procedures specified in Revision B of the service bulletin.

FAA's Determination and Requirements of the Proposed AD

These airplanes are manufactured in Canada and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to

this bilateral airworthiness agreement, TCCA has kept the FAA informed of the situation described above. We have examined TCCA's findings, evaluated all pertinent information, and determined that AD action is necessary for airplanes of this type design that are certificated for operation in the United States.

This proposed AD would supersede AD 2006–05–11 R1 and retain its requirements, but in accordance with revised procedures for the functional tests.

Interim Action

This is considered to be interim action. The inspection reports that are required by this AD will enable the manufacturer to obtain better insight into the nature, cause, and extent of the failures of the shear pins of the PFS units, and eventually to develop final action to address the unsafe condition. Once final action has been identified, we might consider further rulemaking.

Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Revise MRM	1	$80	$80	684	$54,720.
Functional tests	1	$80	$80, per test cycle	684	$54,720, per test cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–14528 (71 FR 15323, March 28, 2006) and adding the following new airworthiness directive (AD):

Bombardier, Inc. (Formerly Canadair): Docket No. FAA–2008–0047; Directorate Identifier 2007–NM–295–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by February 25, 2008.

Affected ADs

(b) This AD supersedes AD 2006–05–11 R1.

Applicability

(c) This AD applies to Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 400) airplanes, certificated in any category, serial numbers 7003 through 7990 inclusive, and 8000 and subsequent.

Unsafe Condition

(d) This AD results from a report that the shear pin located in the input lever of two pitch feel simulator (PFS) units failed due to fatigue. We are issuing this AD to prevent undetected failure of the shear pins of both PFS units simultaneously, which could result in loss of pitch feel forces and consequent reduced control of the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Restatement of Requirements of AD 2006–05–11 R1

Revise Airworthiness Limitations (AWL) Section of Maintenance Requirements Manual

(f) For airplanes having serial numbers 7003 through 7990 inclusive: Within 14 days after February 13, 2004 (the effective date of AD 2004–02–07, which was superseded by AD 2006–05–11 R1), revise the AWL section of the Instructions for Continued Airworthiness of the maintenance requirements manual by incorporating the functional check of the PFS pilot input lever, Task R27–31–A024–01, as specified in Bombardier Temporary Revision (TR) 2B–1784, dated October 24, 2003, to the CL–600–2B19 Canadair Regional Jet Maintenance Requirements Manual, Part 2, Appendix B, ''Airworthiness Limitations,'' into the AWL section.

New Repetitive Functional Tests and Corrective Actions

(g) Before the accumulation of 4,000 total flight hours, or within 100 flight hours after March 27, 2006 (the effective date of AD 2006–05–11 R1), whichever occurs later: Do a functional test of the pilot input lever of the PFS units to determine if the lever is disconnected, in accordance with the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–27–144, Revision A, dated February 14, 2006,

including Appendix A, dated September 15, 2005, except as required by paragraph (j) of this AD. Repeat the test at intervals not to exceed 100 flight hours. Accomplishing the initial functional test terminates the requirements of paragraph (f) of this AD and the repetitive functional checks of the PFS pilot input lever, Task R27–31–A024–01, as specified in the AWL section of the Instructions for Continued Airworthiness of CL–600–2B19 Canadair Regional Jet Maintenance Requirements Manual.

(h) If any lever is found to be disconnected during any functional test required by paragraph (g) of this AD, do the actions specified in paragraphs (h)(1) and (h)(2) of this AD in accordance with the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–27–144, Revision A, dated February 14, 2006, including Appendix A, dated September 15, 2005, except as required by paragraph (j) of this AD.

(1) Before further flight, replace the defective PFS with a serviceable PFS in accordance with the Accomplishment Instructions of the alert service bulletin; and

(2) Within 30 days after removing the defective PFS, submit a test report to the manufacturer in accordance with the Accomplishment Instructions of the alert service bulletin. 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 contained in this AD and has assigned OMB Control Number 2120–0056.

Previously Accomplished Actions

(i) Actions done before March 27, 2006, in accordance with Bombardier Alert Service Bulletin A601R–27–144, including Appendix A, dated September 15, 2005, are acceptable for compliance with the requirements of paragraph (g) of this AD.

New Requirements of This AD

New Service Bulletin for Functional Tests

(j) As of the effective date of this AD, Bombardier Alert Service Bulletin A601R–27–144, Revision B, dated December 20, 2006, including Appendix A, Revision A, dated December 20, 2006, must be used for the actions required by paragraphs (g) and (h) of this AD.

Alternative Methods of Compliance (AMOCs)

(k)(1) The Manager, New York Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) 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.

Related Information

(l) Canadian airworthiness directive CF–2005–41, dated December 22, 2005, also addresses the subject of this AD.

Issued in Renton, Washington, on January 14, 2008.

Stephen P. Boyd,

Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–1167 Filed 1–23–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0055; Directorate Identifier 2007–CE–099–AD]

RIN 2120–AA64

Airworthiness Directives; Pacific Aerospace Limited Models FU24–954 and FU24A–954 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:

This AD is prompted by reports of loosening rivets securing the threaded inserts in the ends of the aileron control pushrods P/N 08–24015–1. Aileron push-pull rods P/N 08–24015–1 have been installed on aircraft embodying PAC/FU/0340.

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 25, 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–2008–0055; Directorate Identifier 2007–CE–099–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 of New Zealand (CAA), which is the aviation authority for New Zealand, has issued DCA/FU24/177, dated November 28, 2007, to correct an unsafe condition for the specified products. The MCAI states:

This AD is prompted by reports of loosening rivets securing the threaded inserts in the ends of the aileron control pushrods P/N 08–24015–1. Aileron push-pull rods P/N 08–24015–1 have been installed on aircraft embodying PAC/FU/0340.

The MCAI requires an initial and repetitive inspection of the aileron and elevator control push-rods and requires corrective action as necessary.

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

Relevant Service Information

Pacific Aerospace Limited has issued PACSB/FU/091, Issue 2, dated November 12, 2007. 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 2 products of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $160, or $80 per product.

In addition, we estimate that any necessary follow-on actions would take about 5 work-hours and require parts costing $100, for a cost of $500 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory 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–2008–0055; Directorate Identifier 2007–CE–099–AD.

Comments Due Date

(a) We must receive comments by February 25, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to models FU24–954 and FU24A–954 airplanes, all serial numbers, certificated in any category.

Subject

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

Reason

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

This AD is prompted by reports of loosening rivets securing the threaded inserts in the ends of the aileron control pushrods P/N 08–24015–1. Aileron push-pull rods P/N 08–24015–1 have been installed on aircraft embodying PAC/FU/0340.

The MCAI requires an initial and repetitive inspection of the aileron and elevator control push-rods and requires corrective action as necessary.

Actions and Compliance

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

(1) Within the next 50 hours time-in-service (TIS) after the effective date of this AD, inspect the pushrod ends on the aileron and elevator control pushrods part number (P/N) 08–24015–1 following Pacific Aerospace Limited Service Bulletin No. PACSB/FU/091, Issue 2, dated November 12, 2007. Repetitively inspect thereafter at intervals not to exceed 150 hours TIS.

(2) Before further flight after any inspection where any rivets are found on aileron and elevator control pushrods P/N 08–24015–1 that have detectable play between the pushrod and the insert or evidence of working rivets, replace the rivets following Pacific Aerospace Limited Service Bulletin No. PACSB/FU/091, Issue 2, dated November 12, 2007.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards 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 (CAA), which is the aviation authority for New Zealand, DCA/FU24/177, dated November 28, 2007; and Pacific Aerospace Limited Service Bulletin No. PACSB/FU/091, Issue 2, dated November 12, 2007, for related information.

Issued in Kansas City, Missouri, on January 16, 2008.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–1137 Filed 1–23–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0046; Directorate Identifier 2007–NM–270–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A318, A319, A320, and A321 Series Airplanes Equipped With Certain Northrop Grumman (Formerly Litton) Air Data Inertial Reference Units

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to certain Airbus Model A319, A320, and A321 series airplanes equipped with certain Litton air data inertial reference units (ADIRUs). The existing AD currently requires modifying the shelf (floor panel) above ADIRU 3, modifying the polycarbonate guard that covers the ADIRUs for certain airplanes, and modifying the ladder located in the avionics compartment for certain airplanes. This proposed AD would require those modifications on additional airplanes. This proposed AD would also require replacing all three ADIRUs with improved ADIRUs. This proposed AD also adds Model A318 series airplanes to the applicability. This proposed AD results from reports that ''NAV IR FAULT'' messages have occurred during takeoff due to failure of an ADIRU and subsequent analysis showing that the shelf modification has not sufficiently addressed failure of an ADIRU. We are proposing this AD to prevent failure of an ADIRU during flight, which could result in loss of one source of critical attitude and airspeed data and reduce the ability of the flightcrew to control the airplane.

DATES: We must receive comments on this proposed AD by February 25, 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 Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France.

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: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2141; fax (425) 227–1149.

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–2008–0046; Directorate Identifier 2007–NM–270–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

On December 12, 2003, we issued AD 2003–26–03, amendment 39–13399 (68 FR 74172, December 23, 2003), for certain Airbus Model A319, A320, and A321 series airplanes equipped with certain Litton air data inertial reference units (ADIRUs). That AD requires modifying the shelf (floor panel) above ADIRU 3, and, for certain airplanes, modifying the polycarbonate guard that covers the ADIRUs, and the ladder located in the avionics compartment, as applicable. That AD resulted from reports that ''NAV IR FAULT'' messages have occurred during takeoff due to failure of ADIRU 3 on several Model A319, A320, and A321 series airplanes. We issued that AD to prevent failure of ADIRU 3 during flight, which could result in loss of one source of critical attitude and airspeed data and reduce the ability of the flightcrew to control the airplane.

Actions Since Existing AD Was Issued

Since we issued AD 2003–26–03, the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, notified us that further analysis has shown that modifying the ADIRU shelf has not sufficiently addressed the unsafe condition. The clearance between the shelf and ADIRUs is still too small. Consequently, vibration during takeoff could cause the shelf to hit the top of an ADIRU, leading to loss of parameters (attitude, vertical speed, ground speed, etc.). The EASA has determined that, in addition to

modifying the ADIRU shelf, all three ADIRUs must be replaced with improved ADIRUs that introduce a more robust shock resistance to adequately address the unsafe condition. The EASA has also determined that the unsafe condition exists on certain Model A318 series airplanes.

Relevant Service Information

Airbus has issued Service Bulletin A320–34–1350, dated March 20, 2006. The service bulletin describes procedures for replacing all three ADIRUs with improved ADIRUs having part number 465020–0303–0316, which introduce a more robust shock resistance and new magnetic variation tables.

Airbus has also issued Service Bulletin A320–25–1248, Revision 01, dated April 16, 2003. The procedures in Revision 01 of the service bulletin are essentially the same as those in the original issue of the service bulletin, dated February 16, 2001. Revision 1 of the service bulletin adds airplanes to the effectivity of the service bulletin.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The EASA mandated the service information and issued airworthiness directive 2007–0217, dated August 9, 2007, to ensure the continued airworthiness of these airplanes in the European Union.

FAA's Determination and Requirements of the Proposed AD

These airplanes are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. As described in FAA Order 8100.14A, ''Interim Procedures for Working with the European Community on Airworthiness Certification and Continued Airworthiness,'' dated August 12, 2005, the EASA has kept the FAA informed of the situation described above. We have examined the EASA's findings, evaluated all pertinent information, and determined that AD action is necessary for airplanes of this type design that are certificated for operation in the United States.

This proposed AD would supersede AD 2003–26–03 and retain the requirements of the existing AD. This proposed AD would also require accomplishing the actions specified in the service information described previously.

Change to Existing AD

This proposed AD would retain all requirements of AD 2003–26–03. Since AD 2003–26–03 was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, the requirement in paragraph (a) of AD 2003–26–03 corresponds to paragraph (f) of this proposed AD.

Costs of Compliance

This proposed AD would affect about 658 airplanes of U.S. registry.

The actions that are required by AD 2003–26–03 and retained in this proposed AD take about 4 work hours per airplane, at an average labor rate of $80 per work hour. Required parts cost about $300 per airplane. Based on these figures, the estimated cost of the currently required actions for U.S. operators is $407,960, or $620 per airplane.

The new proposed actions would take about 3 work hours per airplane, at an average labor rate of $80 per work hour. The manufacturer states that it will supply the required parts to operators at no cost. Based on these figures, the estimated cost of the new actions specified in this proposed AD for U.S. operators is $157,920, or $240 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–13399 (68 FR 74172, December 23, 2003) and adding the following new airworthiness directive (AD):

Airbus: Docket No. FAA–2008–0046; Directorate Identifier 2007–NM–270–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by February 25, 2008.

Affected ADs

(b) This AD supersedes AD 2003–26–03.

Applicability

(c) This AD applies to Airbus Model A318, A319, A320, and A321 series airplanes, certificated in any category; equipped with at least one Northrop Grumman (formerly Litton) air data inertial reference unit (ADIRU), part number (P/N) 465020–0303–0307, –0308, –0309, –0312, –0314, –0315, or –0316; except airplanes equipped with three ADIRUs having P/N 465020–0303–0316 and on which Airbus Modification 30650 or 30872 has been incorporated in production.

Unsafe Condition

(d) This AD results from reports that ''NAV IR FAULT'' messages have occurred during takeoff due to failure of an ADIRU and

subsequent analysis showing that the shelf modification has not sufficiently addressed failure of an ADIRU. We are issuing this AD to prevent failure of an ADIRU during flight, which could result in loss of one source of critical attitude and airspeed data and reduce the ability of the flightcrew to control the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Restatement of Requirements of AD 2003–26–03

Modification

(f) For Model A319, A320, and A321 series airplanes, equipped with any Litton ADIRU installed in accordance with Airbus Modification 24852, 25108, 25336, 26002, or 28218: Within 2 years after January 27, 2004 (the effective date of AD 2003–26–03), do the modifications specified in paragraphs (f)(1), (f)(2), and (f)(3) of this AD, as applicable, in accordance with paragraphs A. through D. of the Accomplishment Instructions of Airbus Service Bulletin A320–25–1248, dated February 16, 2001; or Airbus Service Bulletin A320–25–1248, Revision 01, dated April 16, 2003; as applicable.

(1) For all airplanes: Modify the shelf (floor panel) above ADIRU 3 by installing shims between the shelf and the webs of the shelf support structure.

(2) For airplanes with Airbus Modification 25900P3941 or Airbus Service Bulletin A320–25–1200 accomplished as of January 27, 2004: Modify the polycarbonate guard (umbrella) protecting the ADIRUs by installing shims between the guard and the shelf support structure.

(3) For airplanes with Airbus Modification 23027P2852 or Airbus Service Bulletin A320–52–1038 accomplished as of January 27, 2004: Modify the ladder located in the avionics compartment by machining the slot at the foot of the ladder to increase the depth by 0.236 inch.

New Requirements of This AD

Modification for Certain Airplanes

(g) For all airplanes equipped with any ADIRU installed in accordance with Airbus Modification 31070, 31742, or 35517, except airplanes on which Airbus Modification 30650 or 30872 has been accomplished in production: Within 46 months after the effective date of this AD, modify the ADIRU shelf supports by accomplishing all of the applicable actions specified in the Accomplishment Instructions of Airbus Service Bulletin A320–25–1248, Revision 01, dated April 16, 2003.

Replacement of ADIRUs

(h) For all airplanes except those on which Airbus Modification 35517 has been incorporated in production: Within 46 months after the effective date of this AD, replace all three ADIRUs with improved ADIRUs having P/N 465020–0303–0316 in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–34–1350, dated March 20, 2006.

Alternative Methods of Compliance (AMOCs)

(i)(1) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

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

Related Information

(j) European Aviation Safety Agency airworthiness directive 2007–0217, dated August 9, 2007, also addresses the subject of this AD.

Issued in Renton, Washington, on January 14, 2008.

Stephen P. Boyd,

Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–1135 Filed 1–23–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM08–2–000]

Transparency Provision Under Section 23 of the Natural Gas Act

January 10, 2008.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of Technical Conference.

SUMMARY: The Federal Energy Regulatory Commission is holding a technical conference to address implementation issues associated with the Commission's posting proposal, such as obtaining and posting actual and scheduled flow information and obtaining and posting flow information from storage facilities, as set for in the Notice of Proposed Rulemaking issued December 21, 2007, in Commission Docket No. RM08–2–000.

DATES: The conference is to be held on February 28, 2008.

FOR FURTHER INFORMATION CONTACT: Saida E. Shaalan, Energy Information Analyst, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, 202–502–8278, *saida.shaalan@ferc.gov.*

SUPPLEMENTARY INFORMATION:

Notice of Technical Conference

The staff of the Federal Energy Regulatory Commission (Commission) will hold a technical conference in the above-referenced proceeding on February 28, 2008, at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 in the Commission Meeting Room (2–C) from 9:30 a.m. until 3 p.m. (EST). The staff is holding this conference to address implementation issues associated with the posting proposal, such as obtaining and posting actual and scheduled flow information and obtaining and posting information from storage facilities. This is as set forth in the Notice of Proposed Rulemaking (NOPR), *Pipeline Posting Requirements under Section 23 of the Natural Gas Act,* 73 FR 1116 (January 7, 2008), FERC Stat. & Regs. ¶ 32,626 (2007).

People interested in speaking at the conference may send brief descriptions of the issues they would like to address to Saida Shaalan at *Saida.Shaalan@FERC.gov.*

This conference will not be Web-cast or transcribed. All interested persons are invited, and there is *no* registration fee to attend. Comments should be filed in Docket RM08–2–000, in accordance with the dates set in the rulemaking docket.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–208–1659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

Questions about the conference should be directed to Saida Shaalan by e-mail at *Saida.Shaalan@FERC.gov* or by phone at 202–502–8278.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–1152 Filed 1–23–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–107592–00; REG–105964–98]

RIN 1545–BA11; RIN 1545–AW30

Consolidated Returns; Intercompany Obligations; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of public hearing on proposed regulations regarding the treatment of transactions involving obligations between members of a consolidated group and the treatment of transactions involving the provision of insurance between members of a consolidated group.

DATES: The public hearing is being held on Friday, February 29, 2008, at 10 a.m. The IRS must receive outlines of the topics to be discussed at the public hearing by Friday, February 15, 2008.

ADDRESSES: The public hearing is being held in the IRS Auditorium, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC 20224.

Send Submissions to CC:PA:LPD:PR (REG–107592–00; REG–105964–98), room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday to CC:PA:LPD:PR (REG–107592–00; REG–105964–98), Couriers Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC or sent electronically via the Federal erulemaking Portal at *www.regulations.gov* (IRS–REG–107592–00; REG–105964–98).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Frances L. Kelly (202) 622–7770; concerning submissions of comments, the hearing and/or to be placed on the building access list to attend the hearing Funmi Taylor at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is the notice of proposed rulemaking (REG–107592–00; REG–105964–98) that was published in the **Federal Register** on Friday, September 28, 2007 (72 FR 55139).

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing that submitted written comments by December 27, 2007, must submit an outline of the topics to be addressed and the amount of time to be denoted to each topic (signed original and eight copies).

A period of 10 minutes is allotted to each person for presenting oral comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available, free of charge, at the hearing or in the Freedom of Information Reading Room (FOIA RR) (Room 1621) which is located at the 11th and Pennsylvania Avenue, NW. entrance, 1111 Constitution Avenue, NW., Washington, DC.

Because of access restrictions, the IRS will not admit visitors beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this document.

Cynthia Grigsby,

Senior Federal Register Liaison, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. E8–1145 Filed 1–23–08; 8:45 am]

BILLING CODE 4830–01–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Parts 1193 and 1194

RIN 3014–AA22

Telecommunications Act Accessibility Guidelines; Electronic and Information Technology Accessibility Standards

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meetings.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has established a Telecommunications and Electronic and Information Technology Advisory Committee (Committee) to assist it in revising and updating accessibility guidelines for telecommunications products and accessibility standards for electronic and information technology. This notice announces the dates and times of upcoming committee conference calls.

DATES: The conference calls are scheduled for every Tuesday from January 29, 2008, through April 1, 2008. Calls will begin at 1 p.m. and end at 4 p.m. Eastern time. The conference call on March 11 is scheduled from 1 p.m. until 6 p.m. Eastern time.

ADDRESSES: Individuals can participate in the conference calls by dialing the teleconference numbers which will be posted on the Access Board's Web site at *http://www.access-board.gov/sec508/update-index.htm*.

FOR FURTHER INFORMATION CONTACT: Timothy Creagan, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004–1111. Telephone number: 202–272–0016 (Voice); 202–272–0082 (TTY). Electronic mail address: *creagan@access-board.gov*.

SUPPLEMENTARY INFORMATION: The Architectural and Transportation Barriers Compliance Board (Access Board) established the Telecommunications and Electronic and Information Technology Advisory Committee (Committee) to assist it in revising and updating accessibility guidelines for telecommunications products and accessibility standards for electronic and information technology. The next committee meetings, which are all conference calls, will focus on outstanding issues which have not yet been resolved. The conference calls are scheduled for every Tuesday, starting on January 29, 2008, through April 1, 2008. Calls will begin at 1 p.m. and end at 4 p.m. Eastern time. The conference call on March 11 is scheduled from 1 p.m. until 6 p.m. Eastern time. The agendas, instructions (including information on captioning), and dial in telephone numbers are available at *http://www.access-board.gov/sec508/update-index.htm*. Notices of future meetings will be published in the **Federal Register**.

The committee may cancel or shorten any conference call before it is scheduled to take place depending on the needs of the committee and its progress in discussing and resolving outstanding issues. If a conference call is canceled, a notice will be posted at *http://www.access-board.gov/sec508/update-index.htm*. All conference calls are open to the public and interested persons can dial in and communicate their views during public comment periods scheduled during the calls. Participants may call in from any location of their choosing.

Lawrence W. Roffee,

Executive Director.

[FR Doc. E8–1229 Filed 1–23–08; 8:45 am]

BILLING CODE 8150–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2007–0532–200724; FRL–8520–8]

Approval and Promulgation of Implementation Plans; Alabama Prevention of Significant Deterioration and Nonattainment New Source Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve State Implementation Plan (SIP) revisions submitted by the State of Alabama on June 16, 2006. The proposed revisions modify Alabama's Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) regulations in the SIP to address changes to the federal New Source Review (NSR) permitting regulations, which were promulgated by EPA on December 31, 2002, and reconsidered with minor changes on November 7, 2003 (collectively, these two final actions are called the ''2002 NSR Reform Rules''). The proposed revisions include provisions for baseline emissions calculations, an actual-to-projected-actual methodology for calculating emissions changes, options for plantwide applicability limits (PAL), and recordkeeping and reporting requirements. The June 16, 2006, submittal also contained provisions to address the Clean Air Interstate Rule, on which EPA has already taken action. As requested by Alabama on December 3, 2007, at this time, EPA is not taking action on a proposed revision found in Rule 335–3–14–.04(2)(w)1, which establishes a significance threshold for all NSR regulated pollutants for which there is not a listed significance threshold.

DATES: Comments must be received on or before February 25, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2007–0532, by one of the following methods:

1. *http://www.regulations.gov:* Follow the online instructions for submitting comments.
2. *E-mail: danois.gracy@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* ''EPA–R04–OAR–2007–0532,'' Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Ms. Gracy R. Danois, Air Permits Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R04–OAR–2007–0532. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: For information regarding the Alabama State Implementation Plan, contact Ms. Stacy Harder, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9042. Ms. Harder can also be reached via electronic mail at *harder.stacy@epa.gov.* For information regarding New Source Review, contact Ms. Gracy R. Danois, Air Permits Section, at the same address above. The telephone number is (404) 562–9119. Ms. Danois can also be reached via electronic mail at *danois.gracy@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, references to ''EPA,'' ''we,'' ''us,'' or ''our,'' are intended to mean the Environmental Protection Agency. The supplementary information is arranged as follows:

I. What action is EPA proposing?
II. Why is EPA proposing this action?
III. What is EPA's analysis of Alabama's NSR rule revisions?
IV. What action is EPA taking?
V. Statutory and Executive Order Reviews

I. What Action is EPA Proposing?

On June 16, 2006, the State of Alabama, through the Alabama Department of Environmental Management (ADEM), submitted revisions to the SIP. Specifically, the proposed SIP revisions include changes to ADEM Administrative Code (AAC) Division 3 Code (Air Division), Chapter 14, entitled ''Air Permits.'' ADEM submitted these revisions in response to EPA's December 31, 2002, revisions to the federal NSR program. EPA is now proposing to approve these SIP revisions with the exception of the requirements found in Rule 335–3–14–.04(2)(w)1, the portion of the definition of ''significant'' that establishes a significance threshold of 100 tons for all NSR regulated pollutants for which there is not a listed significant amount.

On December 3, 2007, Alabama requested that this portion of the definition not be approved into the SIP. Additionally, the June 16, 2006, submittal also addressed the Clean Air Interstate Rule which EPA has already taken action on separately.

II. Why is EPA Proposing This Action?

On December 31, 2002 (67 FR 80186), EPA published final rule changes to 40 Code of Federal Regulations (CFR) parts 51 and 52, regarding the Clean Air Act's (CAA or Act) PSD and NNSR programs. On November 7, 2003 (68 FR 63021), EPA published a notice of final action on the reconsideration of the December 31, 2002 (67 FR 80186), final rule changes. In that November 7, 2003, final action, EPA added the definition of ''replacement unit,'' and clarified an issue regarding PAL. The December 31, 2002, and the November 7, 2003, final actions are collectively referred to as the ''2002 NSR Reform Rules.'' The purpose of this action is to propose to approve the SIP submittal from the State of Alabama, which addresses EPA's 2002 NSR Reform Rules.[1]

The 2002 NSR Reform Rules are part of EPA's implementation of Parts C and D of title I of the CAA, 42 U.S.C. 7470–7515. Part C of title I of the CAA, 42 U.S.C. 7470–7492, is the PSD program, which applies in areas that meet the National Ambient Air Quality Standards (NAAQS)—''attainment'' areas—as well as in areas for which there is insufficient information to determine whether the area meets the NAAQS—''unclassifiable'' areas. Part D of title I of the CAA, 42 U.S.C. 7501–7515, is the NNSR program, which applies in areas that are not in attainment of the NAAQS—''nonattainment'' areas. Collectively, the PSD and NNSR programs are referred to as the ''New Source Review'' or NSR programs. EPA regulations implementing these programs are contained in 40 CFR 51.165, 51.166, 52.24, and part 51, appendix S.

The CAA's NSR programs are preconstruction review and permitting programs applicable to new and modified stationary sources of air pollution regulated under the CAA. The NSR programs of the CAA include a combination of air quality planning and air pollution control technology program requirements. Briefly, section 109 of the CAA, 42 U.S.C. 7409, requires EPA to promulgate primary NAAQS to protect public health and secondary NAAQS to protect public welfare. Once EPA sets those standards, states must develop, adopt, and submit to EPA for approval, a SIP that contains emissions limitations and other control measures to attain and maintain the NAAQS. Each SIP is required to contain a preconstruction review program for the construction and modification of any stationary source of air pollution to assure that the NAAQS are achieved and maintained; to protect areas of clean air; to protect air quality related values (such as visibility) in national parks and other areas; to assure that appropriate emissions controls are applied; to maximize opportunities for economic development consistent with the preservation of clean air resources; and to ensure that any decision to increase air pollution is made only after full public consideration of the consequences of the decision.

The 2002 NSR Reform Rules made changes to five areas of the NSR programs. In summary, the 2002 Rules: (1) Provided a new method for determining baseline actual emissions; (2) adopted an actual-to-projected-actual methodology for determining whether a major modification has occurred; (3) allowed major stationary sources to comply with PAL to avoid having a significant emissions increase that triggers the requirements of the major NSR program; (4) provided a new applicability provision for emissions units that are designated clean units; and (5) excluded pollution control projects (PCPs) from the definition of ''physical change or change in the method of operation.'' On November 7, 2003, EPA published a notice of final action on its reconsideration of the 2002 NSR Reform Rules (68 FR 63021), which added a definition for ''replacement unit'' and clarified an issue regarding PALs. For additional information on the 2002 NSR Reform Rules, see, 67 FR 80186 (December 31, 2002), and *http://www.epa.gov/nsr.*

After the 2002 NSR Reform Rules were finalized and effective (March 3, 2003), industry, state, and environmental petitioners challenged numerous aspects of the 2002 NSR Reform Rules, along with portions of EPA's 1980 NSR Rules (45 FR 52676, August 7, 1980). On June 24, 2005, the U.S. Court of Appeals for the District of Columbia Circuit (DC Circuit Court) issued a decision on the challenges to the 2002 NSR Reform Rules. *New York* v. *United States, 413 F.3d 3 (DC Cir. 2005).* In summary, the D.C. Circuit Court vacated portions of the rules pertaining to clean units and pollution control projects, remanded a portion of the rules regarding recordkeeping, e.g., 40 CFR 52.21(r)(6) and 40 CFR 51.166(r)(6), and either upheld or did not comment on the other provisions included as part of the 2002 NSR Reform Rules.

On March 8, 2007, EPA responded to the Court's remand regarding the recordkeeping provisions by proposing two alternative options to clarify what constitutes ''reasonable possibility'' and when the ''reasonable possibility'' recordkeeping requirements apply (72 FR 10445). The ''reasonable possibility'' standard identifies for sources and reviewing authorities the circumstances under which a major stationary source undergoing a modification that does not trigger major NSR must keep records. On December 14, 2007, EPA issued a final rulemaking establishing that ''reasonable possibility'' applies where source emissions equal or exceed 50% of the CAA NSR significance levels for any pollutant. This rule will be effective 30 days after its publication in the **Federal Register**. For further information, see, *http://www.epa.gov/nsr/documents/ReasPos_final.pdf.*

On June 13, 2007, EPA took final action to revise the 2002 NSR reform rules to exclude the portions that were vacated by the D.C. Circuit Court (72 FR 32526). This proposed action is consistent with the decision of the D.C. Circuit Court because Alabama's June 2006 SIP submittal, now being proposed for approval, does not include any portions of the 2002 NSR Reform Rules that were vacated as part of the June 2005 decision.[2]

The 2002 NSR Reform Rules require that state agencies adopt and submit revisions to their SIP permitting programs implementing the minimum program elements of the 2002 NSR Reform Rules no later than January 2, 2006. (Consistent with changes to 40 CFR 51.166(a)(6)(i), state agencies are now required to adopt and submit SIP revisions within three years after new amendments are published in the **Federal Register**.) State agencies may meet the requirements of 40 CFR part 51, and the 2002 NSR Reform Rules, with different but equivalent regulations.

On June 16, 2006, the State of Alabama submitted a SIP revision for the purpose of revising the State's NSR

[1] This action is not addressing any issues related to the Alabama NSR program that were not part of the June 16, 2006, submittal.

[2] Since April 13, 1999, the AAC has included a provision entitled, ''environmental beneficial projects,'' which was approved into the SIP on November 3, 1999, long before the 2002 NSR reform rules. This provision operates in much the same manner as the vacated PCP provision. Consistent with EPA's June 13, 2007, direct final action regarding the vacatur of the PCP provision, Alabama should remove this provision from the SIP at the earliest opportunity because a federal appeals court has found that a similar federal provision is contrary to the CAA.

permitting provisions. These changes were made primarily to adopt EPA's 2002 NSR Reform Rules. As discussed in further detail below, EPA believes the revisions contained in the Alabama submittal are approvable for inclusion into the Alabama SIP.

III. What is EPA's Analysis of Alabama's NSR Rule Revisions?

Alabama currently has a SIP-approved NSR program for new and modified stationary sources. EPA is now proposing to approve revisions to Alabama's existing PSD program in the SIP. These revisions became State-effective on July 11, 2006, and were submitted to EPA on June 16, 2006, for incorporation into the Alabama SIP. Copies of the revised rules, as well as the State's Technical Support Document, can be obtained from the Docket, as discussed in the ''Docket'' section above. A discussion of the specific changes to the Alabama rules, proposed for inclusion in the SIP, follows.

ADEM Rule 335–3–14–.04 contains the preconstruction review program that provides for the prevention of significant deterioration of ambient air quality as required under Part C of title I of the CAA. The program applies to major stationary sources or modifications constructing in areas that are designated as attainment or unclassifiable with respect to the NAAQS. Alabama's PSD program was originally approved into the SIP by EPA on November 10, 1981, and has been revised several times since then. The current revisions to Rule 335–3–14–.04, which EPA is now proposing to approve into the SIP, were provided to update the existing provisions to be consistent with the current federal PSD rules, including the 2002 NSR Reform Rules. State agencies may meet the requirements of 40 CFR part 51, and the 2002 NSR Reform Rules, with different but equivalent regulations. In developing regulations consistent with the 2002 NSR reform rules, ADEM has made the following changes in its rules that are different but equivalent to the federal regulations:

1. Applicability provisions—Actual-to-Potential Test for Projects that Only Involve Existing Emissions Units (335–3–14–.04(1)(h))—As part of the 2002 NSR reform rules, EPA changed NSR applicability determinations to rely on a new definition of ''baseline actual emissions'' that supports the ''actual-to-projected actual'' methodology. In addition to adopting this new methodology for determining NSR applicability, ADEM has retained an optional ''actual to potential'' test for projects that only involve existing units. This approach utilizes the definition for ''actual emissions'' to determine past actual emissions. To allow facilities to continue to use the actual-to-potential test, some of the State definitions are slightly different from the federal rule. ADEM's definition of ''Net Emissions Increase'' in Rule 335–3–14–.04(2)(c) does not include the condition that ''actual emissions'' not be used in determining creditable emissions increases and decreases. Consistent with this approach, the definition of ''actual emissions'' in ADEM's Rule 335–3–14–.04(2)(u) does not include an exclusion for determining significant increases or decreases. Because the ''actual to potential test'' approach is optional for existing units and at least as stringent as the federal rules, this difference is approvable.

2. Definition of ''Allowable Emissions'' and ''Enforceable''—ADEM's definitions in Rule 335–3–14–.04–(2)(p) and (q) contain provisions indicating that appropriate limitations from 40 CFR part 63 also can be considered in determining enforceable limitations. These changes do not have a substantive effect on the terms, but rather, serve to clarify these terms. As a result, the change is at least as stringent as the federal rules, and is approvable.

3. Definition of ''Significant''—In the definition of ''significant'' found in Rule 335–3–14–.04(2)(w), ADEM excluded HF from being considered a fluoride. This change was prompted by the language included in the preamble for the NSR Reform regulations (67 FR 80240) which states that HF should not be considered as part of the fluorides. Therefore, this change is approvable.

4. Definition of Baseline Actual Emissions—ADEM's definition in Rule 335–3–14–.04(2)(uu)3, uses different trigger dates for new and existing units when establishing the period for establishing the baseline actual emissions for the unit. While this is different than the federal rule, ADEM's approach offers the requisite specificity and is at least as stringent as the federal rule.

5. Definition of Regulated NSR Pollutant—ADEM has included language in Rule 335–3–14–.04(2)(ww)4 to exclude compounds listed under section 112(r)(3) of the CAA from the definition of regulated NSR pollutant unless otherwise listed as an NSR pollutant in the federal NSR rules. Such compounds are excluded from the federal NSR rules pursuant to 40 C.F.R. 51.166(b)(49)(iv). ADEM's rule is therefore consistent with federal rules.

6. Reasonable Possibility Provisions—ADEM made the following changes to the reasonable possibility provisions in Rule 335–3–14–.04(17):

a. ADEM included language in Rule 335–3–14-.04(17)(d) to require additional recordkeeping requirements for those modifications ''where there is not a reasonable possibility that a project is part of a major modification and that is not excluded from the definition of physical change or change in the method of operation.''

b. ADEM added language in Rule 335–3–14–.04(17)(e) to require that all sources meet the recordkeeping requirements of the electric utilities. In Rule 335–3–14–.04(17)(e)(2), ADEM proposed additional reporting requirements for sources with a project for which there is a reasonable possibility that the project could exceed the significance thresholds. As discussed earlier, on March 8, 2007 (72 FR 10445), EPA proposed changes to the reasonable possibility provisions in the 2002 NSR reform rules, and on December 14, 2007, EPA issued a final action responding to the D.C. Circuit's remand. ADEM's changes identified above are more stringent than the federal rule and are therefore approvable.

7. PAL Provisions—ADEM made the following changes to the Actuals PAL provisions in Rule 335–3–14–.04(23):

a. (23)(a)2—ADEM omitted the provision which allows facilities utilizing PAL to remove previously set synthetic minor PSD limitations. According to Alabama's submittal, it is ADEM's intent that previously set PSD synthetic minor limits remain intact, similar to how NSPS, SIP and BACT limits remain applicable when requesting and obtaining a PAL in a permit.

b. (23)(f)—ADEM changed the method of setting the PAL. The federal rules state that any unit constructed after the 24-month period chosen for setting the PAL shall have its allowable emissions added to the PAL. ADEM has changed the provision to only allow the inclusion of actual emissions during any 24-month period of operation for sources which have been in operation for greater than 24 months. According to Alabama's SIP submittal, it is ADEM's intent that the PAL be based upon true actual emissions. Allowing for the inclusion of allowable emissions for all sources built after the chosen 24-month period would not be consistent with this approach.

c. (23)(i)5—ADEM has added a provision which states that synthetic minor limits which existed prior to a PAL shall be retained by the source after the expiration of the PAL. According to Alabama's SIP submittal, it is ADEM's intention that previously set PSD synthetic minor limits remain intact, in the same fashion that NSPS, SIP and BACT limits remain effective.

d. (23)(n)1—ADEM has removed the requirement to submit a semi-annual report within 30 days of the end of the reporting period. Since the facility's title V permit would require these reports to be submitted, its inclusion in the PSD regulations is not necessary.

Although the changes to the PAL provisions identified above are different than the federal rule, ADEM's approach is as stringent as the federal rules and is approvable. Additional information regarding these changes, including ADEM's explanation, is available in the Docket for this proposed action.

As part of EPA's review of the June 2006 Alabama SIP submittal, EPA performed a line-by-line review of the proposed revisions, including the provisions summarized above which differ from the federal rule. EPA has determined that the rules included in the June 2006 submittal are consistent with the program requirements for the preparation, adoption and submittal of implementation plans for NSR set forth at 40 CFR 51.165 and 51.166.

Alabama's June 2006 SIP submittal did not include any revisions to its NNSR rules. The State of Alabama currently has two nonattainment areas for $PM_{2.5}$ and no nonattainment areas for ozone. At the time of the submittal by Alabama, EPA had not promulgated NSR implementations rules for $PM_{2.5}$. EPA proposed the NSR implementation rules for $PM_{2.5}$ on November 1, 2005. Once final, Alabama will be required to revise its SIP to update its NNSR rules.

IV. What Action is EPA Taking?

For the reasons discussed above, EPA is proposing to approve the changes made to Alabama's Rule 335–3–14–.04, as submitted by ADEM on June 16, 2006, as revisions to the Alabama SIP.

V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve state rules implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This proposed rule also is not subject to Executive Order 13045 ''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 CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

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

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

Dated: January 10, 2008.

Russell L. Wright, Jr.,

Acting Regional Administrator, Region 4.

[FR Doc. E8–1181 Filed 1–23–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2007–0995; FRL–8518–6]

RIN 2060–A073

Emission Standards for Stationary Diesel Engines

AGENCY: Environmental Protection Agency.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: With this advance notice of proposed rulemaking, the U.S. Environmental Protection Agency is soliciting comment on several issues concerning options the U.S. Environmental Protection Agency can pursue through Federal rulemaking under the Clean Air Act to regulate emissions of pollutants from existing stationary diesel engines, generally, and specifically from larger, older stationary diesel engines. The U.S. Environmental Protection Agency has taken several actions over the past several years to reduce exhaust pollutants from stationary diesel engines. The Agency continues to be interested in exploring opportunities to further reduce exhaust pollutants from stationary diesel engines, particularly existing stationary diesel engines that have not been subject to federal standards. This advance notice of proposed rulemaking is intended to explore possible options to achieve further emissions reductions, particularly from existing stationary diesel engines.

DATES: Comments must be received on or before February 25, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2007–0995, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-Docket@epa.gov.*
- *Fax:* (202) 566–9744.
- *Mail:* U.S. Postal Service, send comments to: Emissions Standards for Stationary Diesel Engines Docket, Environmental Protection Agency, Air and Radiation Docket and Information Center, Mailcode: 2822T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a total of two copies. We request that a separate copy also be sent to the contact person identified below (see **FOR FURTHER INFORMATION CONTACT**).

Hand Delivery: In person or by courier, deliver comments to: EPA Docket and Information Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2007–0995. The U.S. Environmental Protection Agency's (EPA's) policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,*

including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *www.epa.gov/epahome/dockets.htm*.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Emissions Standards for Stationary Diesel Engines Docket, Environmental Protection Agency, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher S. Stoneman, Outreach and Information Division, Office of Air Quality Planning and Standards, Mail Code C304–01, Environmental Protection Agency, Research Triangle Park, NC 27711, telephone number: (919) 541–0823, fax number: (919) 541–0072; e-mail address: *stoneman.chris@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information
A. Does this action apply to me?
B. What should I consider as I prepare my comments for EPA?
1. Submitting CBI.
2. Tips for Preparing Your Comments.
C. Where can I get a copy of this document and other related information?
II. Background Information
A. What is the purpose of this action?
B. Why are emissions from diesel engines a health concern?
C. What is the Agency already doing to address diesel emissions from new and existing stationary and mobile diesel engines?
D. What do we know about existing stationary diesel engines?
III. Specific Issues on Which EPA is Seeking Comment
A. What particular subgroups of existing stationary diesel engines should EPA focus on and how can EPA best find information on those engines?
B. Where can EPA find better information about the location and numbers of existing stationary engines, who owns and operates them and what impact they are having (including hours of operation)?
C. What are appropriate and available technically-feasible, cost-effective methods of controlling emissions from existing stationary diesel engines?
D. To what degree do state and local governments regulate emissions from stationary diesel engines?
E. What are appropriate methods of ensuring compliance with such requirements, including record-keeping and testing issues?
IV. How EPA Intends to Proceed Following Publication of This Notice
V. Statutory and Executive Order Reviews

I. General Information

A. Does this action apply to me?

This notice is likely to be of interest to a variety of parties, including owners and operators of stationary diesel engines, manufacturers of stationary diesel engines, state and local air quality agencies responsible for developing diesel pollution reduction strategies, and individuals and organizations with an interest in emissions from diesel engines. All of these parties and others interested in stationary diesel engine issues are encouraged to read this notice and to submit comments for EPA's consideration.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree, suggest alternatives, and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

C. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this notice will be available on the Worldwide Web through the Technology Transfer Network (TTN). The TTN provides information and technology exchange in various areas of air pollution control. Following signature, an electronic version of this document will be posted at *www.epa.gov/ttn/oarpg* under ''Recent Additions.''

II. Background Information

A. What is the purpose of this action?

The EPA has taken several actions over the past few years to reduce

exhaust pollutants (e.g., particulate matter (PM), nitrogen oxides (NO_X), hazardous air pollutants (HAPs)) from mobile and stationary diesel engines as these pollutants have been associated with several health-related concerns, including cancer, respiratory problems, and premature death. Diesel exhaust is a complex mixture of hundreds of constituents in either a gas or particle form resulting from the complete and incomplete combustion of fuel and small amounts of engine oil. While EPA uses the term ''diesel exhaust'' as a static concept throughout this document, EPA recognizes that the mixture of chemicals in diesel engine exhaust can vary in important ways, particularly when comparing exhaust from uncontrolled engines to exhaust from controlled engines.[1] Diesel exhaust varies significantly in chemical composition and particle sizes between different engine types (heavy-duty, light-duty), engine operating conditions (e.g., idle, acceleration, deceleration) and fuel formulations (high/low sulfur). Over 600 compounds or elements have been identified in diesel exhaust.[2] The emissions include particles composed of carbon and/or inorganic constituents with organics, trace elements and ions absorbed onto the particles, and organic and inorganic gases. The PM present in diesel exhaust consists primarily of fine particles (generally referring to particles less than or equal to 2.5 micrometers (μm) in diameter), including a subgroup with a large number of ultrafine particles (generally referring to particles less than 0.1 μm in diameter). Collectively, these particles have a large surface area which makes them effective for absorbing organic and inorganic HAPs. Their small size also makes them highly respirable and able to reach deeply into the lungs.[3]

As discussed below, EPA has already taken several actions to reduce pollution from diesel engines. In combination, these efforts will improve air quality by substantially reducing emissions of pollutants from these engines. However, the Agency continues to be interested in exploring further opportunities to reduce exhaust pollutants from diesel engines generally, and specifically from larger, older stationary diesel engines, the subject of this notice.

Some stakeholders are encouraging the Agency to review whether there are further ways to reduce emissions of pollutants from existing stationary diesel engines. In its comments on EPA's 2006 proposed rule for new stationary diesel engines,[4] Environmental Defense suggested several possible avenues for the regulation of existing stationary diesel engines, including use of diesel oxidation catalysts or catalyzed diesel particulate filters, as well as the use of ultra-low sulfur diesel (ULSD) fuel. Environmental Defense suggested that such controls can provide significant pollution reductions at reasonable cost.

As a result of discussions with Environmental Defense and other interested stakeholders, EPA is undertaking this Advance Notice of Proposed Rulemaking (ANPR). The purpose of this action is to solicit comment and collect information to aid decision-making related to the reduction of HAP emissions from existing stationary diesel engines and specifically from larger, older engines under Clean Air Act (CAA) section 112 authorities.[5] The Agency is seeking comment on the larger, older engines because available data indicate that they emit the majority of PM and toxic emissions from non-emergency stationary engines as a whole.

The EPA requests comment on specific, well supported information that will assist the Agency with moving forward with the regulation of existing stationary diesel engines (Section III). The areas for which EPA is seeking comment include:

- Locations of stationary diesel engines;
- Usage and duty cycles;
- Technical parameters that help define ''older'' engines for purposes of defining potential subcategories of engines;
- Which stationary diesel engines to control;
- Appropriate controls for those engines;
- Existing stationary engine control measures in place, including State and local requirements;
- Costs and cost effectiveness of, and emission reductions associated with, different control technologies and control strategies; and
- Monitoring, recordkeeping and reporting requirements for owners and operators of existing stationary engines subject to emissions standards.

In this ANPR, EPA provides background information on:

- Existing and other proposed efforts to control stationary engine emissions;
- Some of the information we have on existing stationary diesel engines; and
- Health concerns related to emissions from diesel engines.

B. Why are emissions from diesel engines a health concern?

EPA published a Diesel Health Assessment Document (Diesel HAD) in September 2002.[6] Some of the HAD's important results are summarized here. The Diesel HAD classified exposure to diesel exhaust as ''likely to be carcinogenic to humans by inhalation'' at environmental levels of exposure. Other agencies at the international, federal and state level have come to similar conclusions.[7] The EPA Diesel HAD provided insight into the possible ranges of lung cancer risk that might be present in the population resulting from environmental exposure to diesel emissions. Lifetime cancer risk may exceed 10^{-5} and could be as high as 10^{-3}. Because of uncertainties, the analysis acknowledged that the risks could be lower than 10^{-4} or 10^{-5}, and a zero risk from diesel exhaust exposure was not ruled out. This range of values includes numerous uncertainties and, as discussed in the Diesel HAD, does not constitute an Agency cancer unit risk range suitable for estimating the number of cancer cases resulting from exposure to diesel exhaust. EPA's 1999 National-Scale Air Toxics Assessment (NATA) does not include a quantitative estimate of cancer risk for diesel exhaust, but it concludes that diesel exhaust ranks with the other emissions that the

[1] While the EPA Diesel Health Assessment Document refers to ''diesel exhaust'' in general, it also notes that the ''health hazard conclusions are based on exhaust emissions from diesel engines built prior to the mid-1990s. * * * As new and cleaner diesel engines, together with different diesel fuels, replace a substantial number of existing engines, the general applicability of the health hazard conclusions will need to be reevaluated.,'' ''Health Assessment Document for Diesel Engine Exhaust,'' U.S. Environmental Protection Agency, 600/8–90/057F, *http://www.epa.gov/ttn/atw/dieselfinal.pdf,* May 2002, p. 1–3.

[2] ''Expanding and Updating the Master List of Compounds Emitted by Mobile Sources—Phase III Final Report,'' U.S. Environmental Protection Agency, EPA420–R–06–005, *http://www.epa.gov/otaq/regs/toxics/420r06005.pdf,* February 2006.

[3] ''Air Quality Criteria for Particulate Matter,'' U.S. Environmental Protection Agency, Volume II Document No. EPA600/P–99/002bF, October 2004, Chapter 6.

[4] ''Standards of Performance for Stationary Spark Ignition Internal Combustion Engines and National Emission Standards for Hazardous Air Pollution for Reciprocating Internal Combustion Engines,'' 71 FR 33803–33855, *www.epa.gov/ttn/atw/rice/ricepg.html,* June 12, 2006.

[5] If reductions in HAP emissions occur in the future through the issuance of EPA regulation, because some HAPs are in the particulate form, a reduction in HAP emissions may also result in reductions of emissions of particulate matter.

[6] Health Assessment Document for Diesel Engine Exhaust,'' U.S. Environmental Protection Agency, 600/8–90/057F, *http://www.epa.gov/ttn/atw/dieselfinal.pdf,* May 2002.

[7] A [0] number of other agencies (National Institute for Occupational Safety and Health, the International Agency for Research on Cancer, the World Health Organization, California EPA, and the U.S. Department of Health and Human Services) have made similar classifications regarding the diesel exhaust lung cancer hazard.

national-scale assessment suggests pose the greatest relative risk.[8] The purpose of this national-scale assessment is to provide a perspective on the magnitude of risks posed by outdoor sources of air toxics and to identify the pollutants and sources that are important contributors to these health risks.

The Diesel HAD established an inhalation Reference Concentration (RfC) of 5 μg/m^3 for diesel exhaust as measured by diesel PM.[9] The Diesel HAD concludes ''that acute exposure to DE [diesel exhaust] has been associated with irritation of the eye, nose, and throat, respiratory symptoms (cough and phlegm), and neurophysiological symptoms such as headache, lightheadedness, nausea, vomiting, and numbness or tingling of the extremities.'' [10] There is also evidence of immunologic effects such as the exacerbation of allergenic responses to known allergens and asthma-like symptoms.

Diesel exhaust is a mixture that includes HAPs that are known or suspected human carcinogens or have noncancer effects, including benzene, 1,3-butadiene, formaldehyde, acetaldehyde, polycyclic organic matter (POM), and naphthalene. Benzene[11] and 1,3-butadiene[12] are known human carcinogens. Noncancer health effects may include neurological, cardiovascular, liver, kidney, and respiratory effects, as well as effects on the immune and reproductive systems.

Several of the HAPs emitted by diesel engines (e.g., acrolein, benzene, 1,3-butadiene, formaldehyde, naphthalene, and POM) were identified in EPA's 1999 NATA as national or regional cancer and/or noncancer risk drivers.[13] However, EPA does not have high confidence in the NATA data for all these compounds.[14] It should be noted that the NATA modeling framework has a number of limitations which prevent its use as the sole basis for setting regulatory standards. These limitations and uncertainties are discussed on the 1999 NATA Web site. Even so, this modeling framework is very useful in identifying air toxic pollutants and sources of greatest concern, setting regulatory priorities, and informing the decision making process.[15]

Diesel emissions contain fine and ultra-fine PM and contribute significantly to ambient $PM_{2.5}$ concentrations in many areas of the country.[16] The nature of the effects that have been reported to be associated with fine particle exposures include premature mortality, aggravation of respiratory and cardiovascular disease (as indicated by increased hospital admissions and emergency department visits), changes in lung function and increased respiratory symptoms, as well as new evidence for more subtle indicators of cardiovascular health (71 FR 61152, October 17, 2006).[17] The PM Air Quality Criteria Document also notes that the PM components of gasoline and diesel engine exhaust represent one class of hypothesized likely important contributors to the observed ambient PM-related increases in lung cancer incidence and mortality.[18] The $PM_{2.5}$ National Ambient Air Quality Standard is designed to provide protection from the noncancer and premature mortality effects of $PM_{2.5}$ as a whole, of which diesel PM is a constituent.[19]

Diesel exhaust also includes NO_X and volatile organic compounds, which react in the presence of sunlight to form ozone. Ozone contributes to serious public health problems, including aggravation of respiratory disease (as indicated by increased hospital admissions and emergency room visits, school absences, lost work days, and restricted activity days), changes in lung function and increased respiratory symptoms, altered respiratory defense mechanisms, and chronic bronchitis. In addition, there is suggestive evidence of a contribution of ozone to cardiovascular-related morbidity and highly suggestive evidence that short-term ozone exposure directly or indirectly contributes to non-accidental and cardiopulmonary-related mortality, but additional research is needed to more fully establish underlying mechanisms by which such effects occur.[20]

Tables 3 and 4 in the Section II.D. below indicate that older, larger non-emergency stationary source diesel engines generate a substantial share of the emissions from all stationary diesel engines. In this context, it is important to consider the health effects associated with diesel exhaust.

C. What is the Agency already doing to address diesel emissions from new and existing stationary and mobile diesel engines?

EPA has undertaken several specific regulatory efforts to control emissions from new or reconstructed stationary diesel engines. In June 2004, EPA published national emission standards for hazardous air pollutants (NESHAP) for stationary reciprocating internal combustion engines (RICE) [21] with a site rating of greater than 500 brake horse power (BHP) located at major sources.[22]

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[8] For more information on NATA, see *http://www.epa.gov/ttn/atw/nata1999/risksum.html.*

[9] An RfC is defined by EPA as ''an estimate of a continuous inhalation exposure to the human population, including sensitive subgroups, with uncertainty spanning perhaps an order of magnitude, which is likely to be without appreciable risks of deleterious noncancer effects during a lifetime.''

[10] ''Health Assessment Document for Diesel Engine Exhaust,'' U.S. Environmental Protection Agency, 600/8–90/057F, *http://www.epa.gov/ttn/atw/dieselfinal.pdf,* May 2002, p. 9–9.

[11] Integrated Risk Information System File for Benzene, U.S. Environmental Protection Agency, *http://www.epa.gov/ncea/iris/subst/0276.htm,* 2000.

[12] Integrated Risk Information System File for 1,3-Butadiene, U.S. Environmental Protection Agency, *http://www.epa.gov/ncea/iris/subst/0139.htm,* 2002.

[13] More information on NATA risk drivers is available at: *http://www.epa.gov/ttn/atw/nata1999/risksum.html.*

[14] See ''Control of Emissions From New Marine Compression-Ignition Engines at or Above 30 Liters per Cylinder; Proposed Rule,'' 72 FR 69521–69552, 69534, *http://www.epa.gov/fedrgstr/EPA-AIR/2007/December/Day-07/a23556.htm*, December 2007.

[15] For more information on NATA, see *http://www.epa.gov/ttn/atw/nata1999/risksum.html.*

[16] ''Health Assessment Document for Diesel Engine Exhaust,'' U.S. Environmental Protection Agency, 600/8–90/057F, *http://www.epa.gov/ttn/atw/dieselfinal.pdf*, May 2002, p. 2–97, Table 2–23.

[17] Detailed information on the health effects of PM is provided in: ''Air Quality Criteria for Particulate Matter,'' U.S. Environmental Protection Agency, Volume I, EPA600/P–99/002aF and Volume II, EPA600/P–99/002bF, October 2004; ''Review of the National Ambient Air Quality Standard for Particulate Matter: Policy Assessment of Scientific and Technical Information, OAQPS Staff Paper,'' U.S. Environmental Protection Agency, EPA–452/R–05–005, 2005; ''National Ambient Air Quality Standards for Particulate Matter; Proposed Rule,'' 71 FR 2620–2708, 2626–2637, *http://www.epa.gov/air/particlepollution/actions.html*, January 17, 2006 and ''National Ambient Air Quality Standards for Particulate Matter; Final Rule,'' 71 FR 61144–61233, *http://www.epa.gov/air/particlepollution/actions.html*, October 17, 2006.

[18] ''Air Quality Criteria for Particulate Matter,'' U.S. Environmental Protection Agency, Volume I, EPA600/P–99/002aF and Volume II, EPA600/P–99/002bF, October 2004, p. 8–318.

[19] ''Control of Emissions of Air Pollution From Locomotive Engines and Marine Compression-Ignition Engines Less Than 30 Liters per Cylinder; Proposed Rule,'' 72 FR 15937–15986, 15958, *http://www.epa.gov/oms/locomotv.htm*, April 3, 2007.

[20] Detailed information regarding the health effects of ozone[0] is provided in: ''Air Quality Criteria for Ozone and Related Photochemical Oxidants (Final),'' U.S. Environmental Protection Agency, EPA/600/R–05/004aF–cF, 2006, pp. 7–97 and 8–78; ''Review of the National Ambient Air Quality Standards for Ozone: Policy Assessment of Scientific and Technical Information, OAQPS Staff Paper,'' U.S. Environmental Protection Agency, EPA–452/R–07–003, January 2007; and ''National Ambient Air Quality Standards for Ozone: Proposed Rule,'' 72 FR 37818–37919, 37844 and 37836, *http://www.epa.gov/air/ozonepollution/actions.html*, July 11, 2007.

[21] A reciprocating engine is an internal combustion engine that uses reciprocating motion to convert heat energy into mechanical work.

[22] ''National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines,'' 69 FR 33474–33522, *www.epa.gov/ttn/atw/rice/ricepg.html*, June 15, 2004.

The rule contains emission limitations for new and reconstructed compression ignition (i.e. diesel) stationary RICE, among other sources. In that action, EPA identified stationary RICE as major sources of HAP emissions, such as formaldehyde, acrolein, methanol, and acetaldehyde. The NESHAP required all RICE above 500 BHP located at major sources to meet HAP emission standards reflecting the application of the maximum achievable control technology (MACT). EPA estimated at the time that 40% of stationary RICE would be located at major sources and thus, subject to the final rule. New or reconstructed stationary RICE that operate exclusively as emergency or limited use units were subject only to initial notification requirements. The RICE rule is projected to reduce total national HAP emissions by an estimated 5,600 tons per year (tpy) in the 5th year after the rule is promulgated. EPA expects that engine manufacturers will achieve the expected reductions by installing diesel oxidation catalysts. The emissions reduction performance provided by the installation of diesel oxidation catalysts through this rule were projected to reduce PM emissions from the affected engines by 20–30%, compared with uncontrolled engines.

In July 2006, EPA published new source performance standards (NSPS) for new stationary compression ignition (CI) internal combustion engines (ICE).[23] [24] The standards implement section 111(b) of the CAA and are based on the Administrator's determination that stationary CI ICE cause, or contribute significantly to, air pollution that may reasonably be anticipated to endanger public health or welfare. The standards require all new, modified, and reconstructed stationary CI ICE to use the best demonstrated system of continuous emission reduction of PM, NO_X, hydrocarbons and CO considering costs, non-air quality health, and environmental and energy impacts. The CI ICE NSPS affects stationary CI ICE that commenced construction, modification or reconstruction after July 11, 2005. EPA generally requires that engines affected by the rulemaking use ULSD [25] for all engines (emergency and non-emergency). EPA expects that non-emergency engines will need to use diesel particulate filters and NO_X aftertreatment to meet the NSPS. The final standards will reduce NO_X by an estimated 38,000 tpy, PM by an estimated 3,000 tpy, sulfur dioxide by an estimated 9,000 tpy, nonmethane hydrocarbons by an estimated 600 tpy, and CO by an estimated 18,000 tpy in the year 2015.

In June 2006, EPA published a proposed NESHAP for stationary RICE that either are located at area sources of HAP emissions or that have a site rating of less than or equal to 500 BHP and are located at major sources of HAP emissions.[26] In that same action, EPA also proposed NSPS for stationary spark ignition internal combustion engines. In December 2007, EPA finalized the NSPS for spark ignition engines and the NESHAP for new stationary RICE sources. EPA will be issuing a proposed NESHAP for existing engines in 2009.

For new mobile source diesel engines, EPA has issued the Heavy-Duty Highway Diesel Engine and Fuel Rule [27] and the Clean Air Nonroad Diesel Engine and Fuel Rule [28] regulatory programs. Overall, the substantial majority of diesel exhaust is emitted from mobile sources rather than stationary sources. Engines meeting the emission standards required by the Heavy-Duty Highway Diesel Engine and Fuel Rule achieve a greater than 98 percent reduction in PM and NO_X over uncontrolled emission levels. This program, when fully phased in, will provide annual emission reductions equivalent to removing the pollution from more than 90 percent of today's trucks and buses, or about 13 million trucks and buses. We project that in 2030, when the current heavy-duty vehicle fleet is completely replaced with newer heavy-duty vehicles that comply with these emission standards, this program will reduce annual emissions of non-methane hydrocarbons by 115,000 tons, PM by 109,000 tons, and NO_X by 2.6 million tons. Similarly, the nonroad program will reduce NO_X and PM emissions from nonroad diesel engines by more than 90 percent. Both rules will provide a wide range of public health benefits. Additionally, EPA has recently proposed regulations for locomotive and marine engines. These regulatory programs will ultimately yield reductions of PM and NO_X from mobile sources as high as 90%, depending upon engine category.

EPA has also developed the National Clean Diesel Campaign, which aims to reduce emissions from existing mobile source diesel engines through innovative retrofit programs. Through the campaign, as of 2005 more than 300 clean diesel projects nationwide are resulting in significant emission reductions (in lifetime tons) including: 110,000 NO_X, 20,000 PM, 35,000 hydrocarbons and 25,000 carbon monoxide (CO).[29] To date, emissions from more than 200,000 diesel vehicles have been reduced through these projects.

In addition to these rulemakings, EPA is reviewing its ability to take certain steps to further encourage emission reductions from existing diesel engines, including:

1. Publishing a control techniques guideline/alternative control technology document for existing stationary diesel engines;
2. Developing guidance pertaining to EPA review of federal actions under the National Environmental Policy Act and CAA section 309 addressing the characterization and mitigation of emissions from new and existing diesel engines;
3. Encouraging emission controls for existing stationary diesel engines through voluntary programs;
4. Exploring methods of promoting the use of clean diesel engines by entities in the federal government; and

[23] ''Standards of Performance for Stationary Compression Ignition Internal Combustion Engines; Final Rule,'' 71 FR 39153–39185, *www.epa.gov/fedrgstr/EPA-AIR/2006/July/Day-11/a5968.htm*, July 11, 2006.

[24] Similar to the diesel engines covered by the RICE rule, these compression ignition, internal combustion engines are also reciprocating, diesel engines. However, the 2006 NSPS rulemaking covered fewer types of engines and different pollutants than the June 2004 RICE rule. The 2006 rulemaking addressed criteria pollutants from compression ignition engines, while the 2004 RICE rule addressed HAP emissions from both compression-ignition and spark-ignition engines, both of which are reciprocating engines. For that reason, the 2004 engine rule refers to the engines it covers as ''RICE'' rather than the narrower term used to describe the engines covered by the 2006 engine rule: CI ICE.

[25] EPA also requires ULSD for nonroad and on-highway engines that should help ensure widespread availability of the fuel for stationary engines. See ''Control of Air Pollution from New Motor Vehicles: Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements,'' 66 FR 5001–5193, *www.epa.gov/otaq/highway-diesel/regs/2007-heavy-duty-highway.htm*, January 2001 and ''Control of Emissions of Air Pollution From Nonroad Diesel Engines and Fuel,'' 69 FR 38957–39273, *www.epa.gov/nonroad-diesel/2004fr.htm*, June 29, 2004.

[26] ''Standards of Performance for Stationary Spark Ignition Internal Combustion Engines and National Emission Standards for Hazardous Air Pollution for Reciprocating Internal Combustion Engines,'' 71 FR 33803–33855, *www.epa.gov/ttn/atw/rice/ricepg.html*, June 12, 2006.

[27] See ''Control of Air Pollution from New Motor Vehicles: Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements,'' 66 FR 5001–5193, *www.epa.gov/otaq/highway-diesel/regs/2007-heavy-duty-highway.htm*, January 2001.

[28] See ''Control of Emissions of Air Pollution From Nonroad Diesel Engines and Fuel,'' 69 FR 38957–39273, *www.epa.gov/nonroad-diesel/2004fr.htm*, June 29, 2004.

[29] For more information, see ''National Clean Diesel Campaign: Innovative Strategies for Cleaner Air, 2005 Progress Report,'' U.S. Environmental Protection Agency, EPA420-R–06–009, *http://www.epa.gov/cleandiesel/documents/420r06009.pdf*, June 2006.

5. Publishing a white paper together with an analytical tool for local areas and states to estimate health benefits of diesel emissions reduction strategies.

In addition, EPA, among others, is helping to fund the study of differences in the health effects associated with PM from cleaner burning diesel engines.

D. What do we know about existing stationary diesel engines?

EPA's knowledge about the types of and use of stationary diesel engines consists primarily of certain general information. Based on the number of hours of operation, existing stationary diesel engines are considered either non-emergency or emergency. Generally, non-emergency engines operate about 1,000 hours per year, though they can run more or less than that. Non-emergency engines are engines that are used for several purposes or applications such as: oil and gas industry, including oil and gas extraction and transmission; agriculture (e.g., irrigation pumps); and generation of electricity in remote areas or for purposes of meeting peak demand. Emergency engines operate on an emergency or as-needed basis, including periodically for short periods of time for testing purposes to ensure engine performance in the event of an emergency. Applications for emergency engines include electric power for emergency commercial and institutional needs. For example, hospitals and any other facilities that require power in the event of a power outage may use emergency engines. Emergency engines typically operate an average of 50 hours per year.

Based on (1) sales information from diesel engine manufacturers, (2) data from the Power Systems Research Database and (3) estimates of the stationary source fraction of the total engine sales, EPA estimates that there are about 900,000 existing stationary compression ignition (CI) or diesel engines in the U.S. (see Table 1). About 20% of the engines (about 180,000) are considered non-emergency and about 80% are considered emergency (about 720,000).

Generally, diesel emissions from the engines reflected in Table 1 (and the other Tables in this notice) are largely uncontrolled at the Federal level as EPA's emissions standards for stationary diesel engines did not take effect until August 2004. Non-emergency engines are estimated to emit 90% of total combined PM and NO_X emissions from all stationary diesel engines, while emergency engines are estimated to emit 10% of total PM and NO_X emissions. Based on this information, we believe that a relatively small percentage of the total number of stationary diesel engines operating in the United States are emitting a significant amount of the HAPs from stationary diesel engines overall.

Of the non-emergency engines, about 36,000 non-emergency engines rated 300 BHP or higher were built prior to 1996, which is about 21% of all non-emergency engines (see Table 2). These 36,000 engines emit about:

- 57% of the total PM emissions from all stationary non-emergency diesel engines (see Table 3); and
- 59% of the total HAP emissions from all stationary non-emergency diesel engines (see Table 4).

TABLE 1.—ENGINE MANUFACTURERS ASSOCIATION ESTIMATES OF STATIONARY DIESEL ENGINES IN USE IN THE U.S.

Engine ratings	< 1980	1980–1994	1995–2001	2002–2005	Totals	Percent
≥50 and <100 BHP	26,200	62,759	49,919	22,521	161,399	17.9
≥100 and <175 BHP	57,426	92,857	61,572	23,634	235,489	26.1
≥175 and <300 BHP	27,198	63,991	57,739	40,877	189,805	21.1
≥300 and <600 BHP	70,303	53,188	38,778	31,403	193,672	21.5
≥600 and <750 BHP	8,562	12,664	10,743	8,648	40,617	4.5
≥750	6,899	28,357	33,835	10,520	79,611	8.8
Totals	196,588	313,816	252,586	137,603	900,593	99.9
Percent	21.8	34.8	28.0	15.3		

Notes:

- The Engine Manufacturers Association engine sales data that was used to help develop these numbers represent 70% of total U.S. engine sales.
- Assumes all 1999–2005 engines are currently in operation.
- Total percent does not equal 100 due to rounding.

Source: Engine Manufacturers Association.

TABLE 2.—ENGINE MANUFACTURERS ASSOCIATION ESTIMATES OF NON-EMERGENCY STATIONARY DIESEL ENGINES IN USE IN THE U.S.

Engine ratings	< 1980	1980–1995	1996–2001	2002–2005	Totals	Percent
≥50 and <100 BHP	4,978	14,145	7,264	4,279	30,666	17.9
≥100 and <175 BHP	10,911	21,163	8,179	4,490	44,743	26.1
≥175 and <300 BHP	5,168	14,700	8,429	7,767	36,064	21.1
≥300 and <600 BHP	13,358	11,217	6,256	5,967	36,798	21.5
≥600 and <750 BHP	1,627	2,644	1,804	1,643	7,718	4.5
≥750	1,311	6,212	5,605	1,999	15,127	8.8
Totals	37,353	70,081	37,537	26,145	171,116	100.0

Engines > 300 BHP and < 1996: 36,369 (21.3 of all non-emergency engines)

Notes:

- EPA is providing the 36,369 engine number because we are considering focusing for regulation on non-emergency diesel engines that were built before 1996 and that are rated greater than 300 BHP, although EPA is open to alternatives that commenters may propose. See Section III for a more detailed discussion of this issue.

Source: Engine Manufacturers Association.

TABLE 3.—ENGINE MANUFACTURERS ASSOCIATION ESTIMATES OF PERCENT PM EMISSIONS FROM NON-EMERGENCY ENGINES

Engine ratings	<1980	1980–1995	1996–2001	2002–2005	Totals
≥50 and <100 BHP	1.3	2.4	0.7	0.3	4.7
≥100 and <175 BHP	5.0	6.5	1.3	0.4	13.2
≥175 and <300 BHP	4.1	7.8	1.8	0.6	14.3
≥300 and <600 BHP	20.1	11.3	2.5	0.9	34.8
≥600 and <750 BHP	3.7	4.0	1.1	0.4	9.2
≥750	4.4	13.9	5.0	0.7	24
Totals	38.6	45.9	12.4	3.3	100.2

Percent PM Emissions from non-emergency engines >300 BHP built prior to 1996: 57.4.

Notes:
- The percent estimates are based on an Engine Manufacturers Association assumption that non-emergency engines operate about 2,000 hours/year. EPA in its rulemaking analyses assumes about 1,000 hours/year of operation for non-emergency engines. The 2,000 hours/year assumption is used here because we are using the most readily available information that the Engine Manufacturers Association has provided to EPA. However, EPA would not expect the percent estimates in this table to differ significantly under the 1,000 hours/year EPA assumption.
- Emissions estimates based on EPA AP–42 emission factors and recent mobile source emission factors: *www.epa.gov/ttn/chief/ap42/ch03/index.html.*
- Total percent does not equal 100 due to rounding.

Source: Engine Manufacturers Association.

TABLE 4.—U.S. ENVIRONMENTAL PROTECTION AGENCY ESTIMATES OF PERCENT HAP EMISSIONS FROM NON-EMERGENCY ENGINES

Engine ratings	<1980	1980–1995	1996–2001	2002–2005	Totals
≥50 and <100 BHP	0.5	1.4	0.5	0.2	2.6
≥100 and <175 BHP	2.5	4.9	1.1	0.5	9.1
≥175 and <300 BHP	2.3	6.6	1.7	1.0	11.7
≥300 and <600 BHP	17.4	14.6	2.4	2.3	36.7
≥600 and <750 BHP	4.4	7.1	1.1	1.0	13.5
≥750	2.7	12.7	9.3	1.7	26.4
Totals	29.9	47.4	16.1	6.6	100.0

Percent HAP Emissions from non-emergency engines >300 BHP built prior to 1996: 58.9.

Notes:
- Percent estimates based on assumption that non-emergency engines run about 1,000 hours/year. EPA in its rulemaking analyses assumes about 1,000 hours/year for non-emergency engines.
- HAP emissions estimates include: Formaldehyde, acetaldehyde, polycyclic aromatic hydrocarbons, naphthalene, and acrolein.
- Emissions estimates based on EPA AP–42 emission factors and recent mobile source emission factors: *www.epa.gov/ttn/chief/ap42/ch03/index.html.*

Source: U.S. Environmental Protection Agency.

III. Specific Issues on Which EPA Is Seeking Comment

Although we have some limited information about larger, older stationary diesel engines, we have a need for more detailed and current data related to existing engines. We are issuing this ANPR to request information that will help inform our efforts on how best to control emissions from these engines. There are several issues that we need to understand more fully in order to implement a program for existing stationary diesel engines. In this section, we break down the specific areas of interest for which we are requesting comment.

A. What particular subgroups of existing stationary diesel engines should EPA focus on and how can EPA best find information on those engines?

Currently, EPA is considering focusing on non-emergency diesel engines that were built before 1996 and that are rated greater than 300 BHP, although EPA is open to alternatives that commenters may propose that are well supported with appropriate data. We are focusing on non-emergency engines, because, while they represent only 20% of the total number of stationary engines, they are responsible for a significant amount of HAP emissions from stationary engines. EPA is considering focusing on pre-1996 engines because, generally speaking, emissions controls were not implemented in a significant way on nonroad diesel engines until the 1996 engine model year. Thus, the pre-1996 engines represent stationary engines that EPA believes are largely uncontrolled. In addition, diesel retrofit controls are typically more cost effective and technically feasible the larger the engine. [30] When these three criteria are combined, it comprises a set of larger, older non-emergency engines that represent the majority of PM and toxics emissions from non-emergency engines as a whole (see Tables 3 and 4).

While we believe this is an appropriate set of engines to focus on, we are requesting comment on whether there are other appropriate categories of engines that should also be considered. For example, should EPA consider requiring emission reductions for non-

[30] For more information, see ''The Cost-Effectiveness of Heavy-Duty Diesel Retrofits and Other Mobile Source Emission Reduction Projects and Programs,'' U.S. Environmental Protection Agency, EPA420–B–07–006, *www.epa.gov/cleandiesel/publications.htm,* May 2007.

emergency stationary diesel engines built in the late 1990s (notwithstanding our estimates that total emissions from these engines are lower). The list below further explores diesel control technologies and associated emission reduction issues.

Particular areas for categorization of engines on which we could focus include:

- The model year of the engine, including engines built since 1996 and remaining useful engine life for older engines;
- The type and size of engine, including engines rated less than 300 BHP in size;
- The number of hours of operation and/or time profile annually or over a shorter term;
- The applicable technologies, and corresponding emissions reductions available, for given ages and sizes of engines;
- The duty cycle;
- The sector or use;
- The ability of engine owners and operators to access the lower sulfur fuel necessary to ensure the proper performance of pollution control devices;
- Ease of installation and cost effectiveness of emissions reductions associated with controls on existing stationary diesel engines, including newer, later model year engines; and
- Any other distinguishing characteristics commenters may think important.

B. Where can EPA find better information about the location and numbers of existing stationary engines, who owns and operates them and what impact they are having (including hours of operation)?

Above, EPA lays out the general information it has available on the numbers of stationary diesel engines believed operating today. EPA specifically estimates that there are approximately 36,000 non-emergency, pre-1996 stationary diesel engines larger than 300 BHP. EPA seeks comment on the accuracy of these numbers, as well as of the other estimates in Tables 3 and 4. EPA is requesting any information that informs its understanding of the number and distribution of these stationary diesel engines and the group(s) that would be most affected by any requirements to reduce emissions.

We also lack detailed information on the location of these sources, including their owners and operators. If EPA proposes standards based on engine size and age criteria, then we would need detailed information on the location or the owners and operators of these sources.

We are aware of the following information sources from which we need information that we currently lack:

- State-managed permit databases;
- State-gathered information through surveys and other means;
- Engine manufacturer and owner/operator and fuel industry information such as fuel distribution/delivery records, and fuel storage tank sales, repairs, and permits;
- Industry sectors that are major owners and operators of diesel engines, including their trade associations such as the Interstate Natural Gas Association of America and the American Petroleum Institute; and
- Diesel control technology manufacturers.

We would like to know if states have an accurate count of the number of engines operating in the state, including their purpose and hours of operation. If so, EPA is also interested in the source of the information (e.g., a state permit database). We are also interested in any small business impacts and other relevant information about the owners and operators and number of hours that these engines operate.

C. What are appropriate and available technically-feasible, cost-effective methods of controlling emissions from existing stationary diesel engines?

EPA seeks information on control technologies and other methods for reducing diesel HAP emissions from existing stationary diesel engines, particularly for non-emergency, pre-1996 engines that are rated greater than 300 BHP. These methods include, but are not limited to, one or more of the following:

- Retrofitting with diesel particulate filters, including both actively and passively regenerated filters;
- Retrofitting with partial flow filters;
- Retrofitting with oxidation catalysts;
- Retrofitting with closed crankcase ventilation systems;
- Engine recalibration or fuel system upgrade;
- Replacement with new, state-of-the-art engines;
- Use of low sulfur diesel (500 parts per million (ppm)) or ULSD (15 ppm) fuel;
- Use of fuel substitution systems using natural gas;
- Use of biodiesel; and
- Management practices.

EPA understands that there may be limitations, both economic and technical, to certain control methods and solicits engine emissions testing data, cost data and other information to inform our approach to these issues. For example, EPA would like clarification on the following:

- The extent to which low sulfur and ULSD fuel may be problematic in certain older engines due to fuel system seal leakage and how this problem has been addressed through fuel additives and/or modifications to mobile source engines;
- Potential for the malfunction of diesel retrofit devices on older engines (e.g., diesel particulate filters), the engine conditions that lead to this problem, and appropriate precautions to avoid malfunction;
- Technical feasibility of controls for short use periods (e.g., need for controls to warm up in order to be effective, the need for these engines to start immediately without mechanical complications);
- Cost-effectiveness of controls on existing engines (i.e., emissions reductions relative to cost and hours operated);
- Cost, availability and emissions related to fuel substitution systems using natural gas;
- The equipment and operating costs (and any challenges, including safety issues) associated with known control technologies;
- Engine size limitations beyond which a control technology may become infeasible and for what reason; and
- Any other technical and economic feasibility issues that would affect the control of emissions reductions from older, larger and smaller diesel engines.

D. To what degree do state and local governments regulate emissions from stationary diesel engines?

EPA requests comment on the extent to which state and local governments have issued regulations to reduce emissions from stationary diesel engines of all sizes, particularly the larger, older engines. EPA is aware, for example, that the States of California [31] and Wisconsin [32] have issued rules that mandate reductions of particulate emissions from existing stationary diesel engines. EPA is interested in information about other state and local governments that have issued

[31] For more information on the California rule, see: ''Airborne toxic control measure for stationary compression ignition engines,'' section 93115, title 17, California Code of Regulations, *www.arb.ca.gov/diesel/ag/documents/finalatcm.pdf.*

[32] For more information on the Wisconsin rule, see: ''Fuel, control and compliance requirements for compression ignition internal combustion engines combusting fuel oil,'' section NR 445.09, *www.legis.state.wi.us/rsb/code/nr/nr445.pdf.*

regulations controlling emissions from existing stationary diesel engines.

E. What are appropriate methods of ensuring compliance with such requirements, including recordkeeping and testing issues?

Given the large population of stationary diesel engines and our lack of information on the location and owners and operators of these engines, EPA requests comment on effective methods to ensure compliance with any emission reduction requirements. EPA also requests comment on the extent to which the owners and operators of these engines are small businesses and on what the appropriate regulatory compliance requirements should be for those entities. EPA is especially interested in ways to minimize the monitoring burden to individual owners and operators, while maintaining an appropriate level of environmental protection.

IV. How EPA Intends To Proceed Following Publication of This Notice

Following the closing of the comment period for this notice, EPA will summarize and analyze the comments received. The summary and analysis will be used to help develop and inform the notice of proposed rulemaking that will follow this notice.

V. Statutory and Executive Order Reviews

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action.'' Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action. Generally, because this action is ''advanced'' in nature and does not, therefore, propose any requirements on any entities, the various administrative requirements EPA must address in the rulemaking process are not applicable. When EPA issues a notice of proposed rulemaking that contains proposed emissions standards for stationary diesel engines, EPA will address those requirements.

Lists of Subjects in 40 CFR Part 63

Environmental protection, Air toxics.

Dated: January 16, 2008.

Stephen L. Johnson,

Administrator.

[FR Doc. E8–1118 Filed 1–23–08; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–B–7759]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1 percent annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or show evidence of having an effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents, and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

DATES: Comments are to be submitted on or before April 23, 2008.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community are available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA–B–7759, to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151, or (e-mail) *bill.blanton@dhs.gov*.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151 or (e-mail) *bill.blanton@dhs.gov*.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

Administrative Procedure Act Statement. This matter is not a rulemaking governed by the Administrative Procedure Act (APA), 5 U.S.C. 553. FEMA publishes flood elevation determinations for notice and comment; however, they are governed by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and do not fall under the APA.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Executive Order 12866, Regulatory Planning and Review. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

Executive Order 13132, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This proposed rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground	
				Existing	Modified
City of Jackson, Missouri					
Missouri	City of Jackson	Goose Creek	Confluence with Hubble Creek	+399	+401
			Approximately 2.44 miles upstream of East Main Street.	None	+476
	City of Jackson	Hubble Creek	Confluence with Goose Creek	+399	+400
			Missouri State Route Y	None	+474
	City of Jackson	Neal Creek	Confluence with Goose Creek	+427	+428
			Approximately 0.60 mile upstream of Woodland Drive.	None	+472
	City of Jackson	Ramsey Branch	Approximately 1.51 miles upstream of Hoppers Road.	None	+474
			Approximately 1.62 miles upstream of Hoppers Road.	None	+477
	City of Jackson	Rocky Branch	0.21 miles upstream of confluence with Hubble Creek at South Farmington Road.	+405	+406
			Approximately 130 feet upstream of North Farmington Road.	None	+470
	City of Jackson	Rocky Branch West Fork	Confluence with Rocky Branch	None	+410
			Approximately 260 feet upstream of Old Toll Road.	None	+446
	City of Jackson	West Fork of Williams Creek.	Confluence with Williams Creek	None	+419
			Approximately 230 feet upstream of Old Cape Road.	None	+437
	City of Jackson	Williams Creek	Approximately 0.39 miles downstream of Highway 61.	+416	+414
			Approximately 0.19 miles upstream of Bainbridge Road.	+438	+441

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

ADDRESSES

City of Jackson

Maps are available for inspection at 101 Court Street, Jackson, MO 63755.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Autauga County, Alabama, and Incorporated Areas				
Autauga Creek	365 feet southwest of the intersection of First Street and Chestnut St. (Landward of Levee along Autauga Creek).	+184	+180	City of Prattville.
	300 feet northwest of the intersection of Lower Kingston Road and Sixth St. (Landward of Levee along Autauga Creek).	+184	+196	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	

Depth in feet above ground.

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

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ADDRESSES

City of Prattville

Maps are available for inspection at 101 W. Main Street, Prattville, AL 36067.

Lafayette Parish, Louisiana, and Incorporated Areas

Acadiana Coulee	At the confluence with Vermillion River	+15	+16	Unincorporated Areas of Lafayette Parish, City of Lafayette.
	Approximately 1800 feet Upstream of Guidry Road	+27	+26	
	At the confluence with Vermillion River	+15	+16	City of Lafayette, Unincorporated Areas of Lafayette Parish.
	Approximately 1189 feet upstream from intersection with Guidry Road.	+27	+25	
Bayou Carencro	Confluence with Vermillion River	+23	+22	Unincorporated Areas of Lafayette Parish.
	Intersection with Billeaux Road	None	+42	
Bayou Parc Perdue	Approximately 5445 feet downstream of Chemin Agreable (Parish Boundary).	None	+17	Town of Youngsville, Unincorporated Areas of Lafayette Parish.
	Confluence with Isaac Verot Coulee Lateral 3	None	+25	
Bayou Que De Tortue	Approximately 11500 feet downstream of SH 35	None	+17	Town of Duson, Unincorporated Areas of Lafayette Parish.
	Intersection of Whitmore Road	None	+37	
Beau Basin Coulee	Confluence with Vermillion River	None	+20	Unincorporated Areas of Lafayette Parish, Town of Carencro.
	Intersection with Highway 49	+40	+49	
Broadmoor Coulee	Confluence with Vermillion River	None	+16	City of Lafayette.
	At the intersection with Ambassader Caffery Parkway	None	+26	
Coulee Ile Des Cannes Lateral 1.	At the confluence with Coulee Ile Des Cannes	None	+19	Unincorporated Areas of Lafayette Parish.
	Approximately 3,700 feet upstream of S. Fieldspan Road.	None	+28	
Lateral 3	Approximately 4,950 feet upstream from the confluence with Coulee Ile Des Cannes.	+29	+28	City of Scott, City of Lafayette, Unincorporated Areas of Lafayette Parish.
	Approximately 500 feet upstream of Mills Road	+36	+35	
Coulee Fortune North	At the confluence with Vermilion River (Storage area)	+18	+15	Town of Broussard, Unincorporated Areas of Lafayette Parish.
	Approximately 4,000 feet Upstream of S. Morgan Street.	+30	+27	
Coulee Fortune South	Approximately 700 feet downstream of U.S. HWY 90 East (Parish Boundary).	None	+20	Town of Broussard, Unincorporated Areas of Lafayette Parish.
	Approximately 3,000 feet upstream of Heart D. Farm Road.	None	+27	
Coulee Ile Des Cannes	At the confluence with Vermilion River	None	+16	City of Scott, City of Lafayette, Unincorporated Areas of Lafayette Parish.
	Approximately 2,800 feet upstream of Cocodrill Road	None	+39	
Lateral 2	At the confluence with Coulee Ile Des Cannes	+25	+24	Unincorporated Areas of Lafayette Parish, City of Lafayette, City of Scott.
	Approximately 6,700 feet upstream of Ridge Road	+30	+29	
Coulee LaSalle	At the parish boundary line	None	+24	Unincorporated Areas of Lafayette Parish.
	4,800 feet upstream of Cane Brake Road	None	+25	

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Coulee Lantier	At the confluence with Vermillion River	None	+22	Unincorporated Areas of Lafayette Parish.
	1600 feet upstream of Magellan Road	None	+22	
	Confluence with Vermillion River	None	+20	
	Approximately 1600 feet upstream of Magellan Road	None	+21	
Coulee Mine	At the confluence with Vermillion River	+16	+17	City of Scott, City of Lafayette.
	At the intersection with Malapart Road	None	+46	
Lateral 1 (West Channel)	At the confluence with Coulee Mine	+29	+25	City of Lafayette, Unincorporated Areas of Lafayette Parish.
	At Renaud Drive	+37	+38	
Dan Dabaillion Coulee	At the confluence with Vermillion River	+17	+19	City of Lafayette, Town of Carencro.
	At Guidry Lane	None	+49	
Darby Coulee	At the confluence with Vermillion River	None	+14	Unincorporated Areas of Lafayette Parish.
	At the intersection of LA 339	None	+19	
Edith Coulee	At the confluence with Vermillion River	None	+15	Unincorporated Areas of Lafayette Parish.
	At the intersection with LA 733	None	+21	
Grand Avenue Coulee	At the confluence with Vermillion River	+15	+16	City of Lafayette.
	At the Crawford Street crossing	+30	+29	
IDC—Lateral 4	At the confluence with Coulee Ile Des Cannes	None	+27	Unincorporated Areas of Lafayette Parish.
	3,500 feet upstream of Darceneaux Road	None	+34	
Isaac Verot Coulee—Lateral 3.	At the confluence with Isaac Verot Coulee	None	+26	Unincorporated Areas of Lafayette Parish, Town of Broussard, Town of Youngsville.
	Approximately 2,100 feet upstream of Serenity Road	None	+29	
Lateral 2	At the confluence with the Vermillion River	+15	+16	City of Lafayette, Unincorporated Areas of Lafayette Parish.
	At the intersection with Highway 89	None	+36	
Lateral 2A	At the confluence with IVC/Lateral 2	None	+28	City of Lafayette, Unincorporated Areas of Lafayette Parish.
	800 feet upstream of the intersection with Becky Lane	None	+30	
Lateral 3	At the confluence with Isaac Verot Coulee	None	+26	Unincorporated Areas of Lafayette Parish.
	Approximately 250 feet from the intersection with Bonin Road.	None	+29	
Jupiter Street Coulee	At the confluence with Webb Coulee	+30	+27	City of Lafayette, Unincorporated Areas of Lafayette Parish.
	At the intersection with the Southern Pacific Railroad	+40	+39	
Manor Park Coulee	Confluence with Vermillion River (BFE REMAINS CONSTANT).	+18	+19	Unincorporated Areas of Lafayette Parish, City of Lafayette.
	Approximately 3,600 feet upstream of Parklane Rd (BFE REMAINS CONSTANT).	+18	+19	
Pont Brule Coulee	Approximately 4,330 feet downstream of State Highway 726 (Parish Boundary) (BFE REMAINS CONSTANT).	+22	+21	Unincorporated Areas of Lafayette Parish.
	Approximately 3,000 feet upstream of State Highway 726 (BFE REMAINS CONSTANT).	+22	+21	
Vermillion River	At the southern parish boundary line	+14	+15	Unincorporated Areas of Lafayette Parish.
	At the northern parish boundary line	+22	+21	
Webb Coulee (Lower Reach)	At the confluence with Vermillion River	+15	+16	Unincorporated Areas of Lafayette Parish.
	At the confluence with Jupiter Street Coulee	+30	+27	
West Coulee Mine	At the confluence with Coulee Mine	+36	+35	City of Lafayette, City of Scott, Unincorporated Areas of Lafayette Parish.
	Approximately 6,800 feet upstream of Interstate 10	+36	+37	

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Lafayette

Maps are available for inspection at 705 W. University Ave., Lafayette, LA 70506.

City of Scott

Maps are available for inspection at 445 Lions Club Rd., Scott, LA 70583.

Town of Broussard

Maps are available for inspection at 416 East Main St., Broussard, LA 70518.

Town of Carencro

Maps are available for inspection at 210 East Saint Peter St., Carencro, LA 70520.

Town of Duson

Maps are available for inspection at 806 First St., Duson, LA 70529.

Town of Youngsville

Maps are available for inspection at 305 Iberia St., Youngsville, LA 70592.

Unincorporated Areas of Lafayette Parish

Maps are available for inspection at 101 East Cypress, Lafayette, LA 70501.

Benton County, Missouri, and Incorporated Areas

Lake of the Ozarks (Osage River and tributaries).	At confluence with Big Buffalo Creek	None	+666	City of Warsaw, Unincorporated Areas of Benton County.
	At confluence with Cole Camp Creek	None	+667	
	At U.S. Highway 65	+667	+669	

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ADDRESSES

City of Warsaw

Maps are available for inspection at City Office, 181 W. Harrison, Warsaw, MO 65355.

Unincorporated Areas of Benton County

Maps are available for inspection at County Office, 316 Van Buren, Warsaw, MO 65355.

Miller County, Missouri, and Incorporated Areas

Grand Glaize Creek	Approximately 1 mile downstream of County Road 42–18.	None	+672	Unincorporated Areas of Miller County.
	Approximately 3,000 feet upstream of County Road 42–18.	None	+680	
Lake of the Ozarks (Osage River and tributaries).	At Bagnell Dam	None	+664	City of Lake Ozark, Town of Lakeside, Unincorporated Areas of Miller County.
	Approximately 1 mile upstream of Bagnell Dam	None	+664	

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+ North American Vertical Datum.
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Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Lake Ozark

Maps are available for inspection at City Office, 2624 Bagnell Dam Boulevard, Lake Ozark, MO 65049.

Town of Lakeside

Maps are available for inspection at Ameran UE, 617 River Road, Lake Ozark, MO 65049.

Unincorporated Areas of Miller County

Maps are available for inspection at County Office, 2001 Highway 52, Tuscumbia, MO 65082.

Morgan County, Missouri, and Incorporated Areas

Gravois Creek	At confluence with Osage River	None	+664	Town of Gravois Mills, Unincorporated Areas of Morgan County.
	Approximately 1400 feet upstream of Route TT	None	+667	
Lake of the Ozarks (Osage River and tributaries).	At confluence with Gravois Creek	None	+664	Town of Gravois Mills, Unincorporated Areas of Morgan County.
	At confluence with Little Buffalo Creek	None	+665	

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+ North American Vertical Datum.
# Depth in feet above ground.
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ADDRESSES

Town of Gravois Mills

Maps are available for inspection at City Office, 154 Highway 5, Gravois Mills, MO 65037.

Unincorporated Areas of Morgan County

Maps are available for inspection at County Office, 100 East Newton, Versailles, MO 65084.

Douglas County, Nebraska, and Incorporated Areas

Hell Creek	Approximately 50 feet upstream of Harrison Street	+1055	+1052	Village of Boys Town, City of Omaha.
	At I Street	+1101	+1098	
	Just upstream of Pacific Street	None	+1166	
North Branch West Papillion Creek.	Approximately 250 feet upstream of Blondo Street	+1118	+1117	Unincorporated Areas of Douglas County, City of Omaha.
	At Ida Street	+1164	+1165	
	At North 186th Street	None	+1191	
West Papillion Creek	Approximately 1200 feet upstream of Interstate 80	+1044	+1045	City of Omaha.
	At U.S. Highway 6 (West Dodge Road)	+1105	+1106	
	At NE Highway 64 (West Maple Road)	+1184	+1182	

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+ North American Vertical Datum.
# Depth in feet above ground.
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ADDRESSES

City of Omaha

Maps are available for inspection at City Hall, 1819 Farnam Street, Omaha, NE 68183.

Unincorporated Areas of Douglas County

Maps are available for inspection at Douglas County Courthouse, 3015 Menke Circle, Omaha, NE 68134.

Village of Boys Town

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Maps are available for inspection at Village of Boys Town, 14100 Crawford Street, Boys Town, NE 68010.				
Sarpy County, Nebraska, and Incorporated Areas				
Hell Creek	100 feet downstream of the Burlington Northern Santa Fe Railroad.	+1034	+1038	City of La Vista.
	150 feet upstream of the Burlington Northern Santa Fe Railroad.	+1053	+1039	
	Approximately 50 feet downstream of Harrison Street	+1055	+1049	
Midland Creek	Approximately 700 feet downstream of Cedardale Drive.	+1012	+1011	City of Papillion, Unincorporated Areas of Sarpy County.
	450 feet downstream of State Highway 370	+1025	+1018	
South Papillion Creek	Approximately 300 feet upstream of Giles Street	None	+1036	Unincorporated Areas of Sarpy County, City of La Vista.
	At South 168th Street	None	+1100	
	Approximately 300 feet upstream of South 204th Street.	None	+1177	
Unnamed Tributary of South Papillion Creek.	Approximately 1000 feet upstream of confluence with South Papillion Creek.	None	+1042	Unincorporated Areas of Sarpy County, City of La Vista, City of Papillion.
	At Cornhuskers Road	None	+1056	
	At State Highway 370	None	+1104	
Unnamed Tributary of West Papillion Creek.	Approximately 1600 feet downstream of South 114th Street.	None	+1034	City of Papillion, City of La Vista.
	Approximately 600 feet downstream of State Highway 370.	None	+1100	
	Approximately 1 mile upstream of State Highway 370	None	+1158	
Walnut Creek	At West Lincoln Street	+1026	+1023	City of Papillion.
	150 feet upstream of State Highway 370	+1044	+1043	
West Papillion Creek (with levees).	Just downstream of South 48th Street	+996	+999	City of Bellevue, City of La Vista, City of Papillion.
	Just upstream of South 66th Street	+1004	+1007	
	At Interstate 80	+1042	+1043	
West Papillion Creek (without left levee).	Just downstream of South 48th Street	+993	+999	City of Bellevue, City of La Vista, City of Papillion.
	Just upstream of South 66th Street	+1001	+1008	
	Just upstream of Washington Street	+1008	+1015	
West Papillion Creek (without right levee).	Just downstream of South 48th Street	+997	+999	City of Bellevue, City of La Vista, City of Papillion.
	Just upstream of South 66th Street	+1003	+1008	
	Just upstream of Washington Street	+1012	+1014	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Bellevue

Maps are available for inspection at 210 West Mission Avenue, Bellevue, NE 68005.

City of La Vista

Maps are available for inspection at 8116 Park View Boulevard, La Vista, NE 68128.

City of Papillion

Maps are available for inspection at 122 East 3rd Street, Papillion, NE 68046.

Unincorporated Areas of Sarpy County

Maps are available for inspection at Sarpy County Courthouse, 1210 Golden Gate Drive, Papillion, NE 68046.

Northampton County, North Carolina, and Incorporated Areas				
Ahoskie Creek	Approximately 500 feet downstream of the Northampton/Hertford County boundary.	None	+58	Unincorporated Areas of Northampton County.
	Approximately 50 feet downstream of Tyler Road (State Road 1100).	None	+66	

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
	At the confluence with Ahoskie Creek	None	+60	
Tributary 8	Unincorporated Areas of Northampton County..			
	Approximately 0.5 mile upstream of the confluence with Ahoskie Creek.	None	+62	
Bear Swamp	At the confluence with Urahaw Swamp	None	+51	Unincorporated Areas of Northampton County.
	Approximately 0.9 mile upstream of NC 305 Highway	None	+78	
Beaverpond Creek	At the confluence with Beaverpond Creek Tributary 1	None	+98	Unincorporated Areas of Northampton County.
	Approximately 0.8 mile upstream of the North Carolina/Virginia State boundary.	None	+216	
Tributary 1	At the confluence with Beaverpond Creek	None	+98	Unincorporated Areas of Northampton County.
	Approximately 0.5 mile upstream of the confluence with Beaverpond Creek.	None	+111	
Tributary 2	At the confluence with Beaverpond Creek	None	+127	Unincorporated Areas of Northampton County.
	Approximately 0.6 mile upstream of Old Emporia Road (State Road 1209).	None	+150	
Corduroy Swamp	At the confluence with Kirby Creek	None	+55	Unincorporated Areas of Northampton County.
	Approximately 2.1 miles upstream of Mount Carmel Road (State Road 1333).	None	+128	
Tributary 1	At the confluence with Corduroy Swamp	None	+66	Unincorporated Areas of Northampton County.
	Approximately 0.6 mile upstream of the confluence with Corduroy Swamp.	None	+70	
Tributary 2	At the confluence with Corduroy Swamp	None	+71	Unincorporated Areas of Northampton County.
	Approximately 0.6 mile upstream of the confluence with Corduroy Swamp.	None	+78	
Tributary 3	At the confluence with Corduroy Swamp	None	+78	Unincorporated Areas of Northampton County.
	Approximately 0.9 mile upstream of the confluence with Corduroy Swamp.	None	+84	
Tributary 4	At the confluence with Corduroy Swamp	None	+87	Unincorporated Areas of Northampton County.
	Approximately 0.8 mile upstream of the confluence with Corduroy Swamp.	None	+93	
Tributary 5	At the confluence with Corduroy Swamp	None	+89	Unincorporated Areas of Northampton County.
	Approximately 1.2 miles upstream of the confluence with Corduroy Swamp.	None	+98	
Tributary 6	At the confluence with Corduroy Swamp	None	+104	Unincorporated Areas of Northampton County.
	Approximately 0.4 mile upstream of the confluence with Corduroy Swamp.	None	+106	
Corwells Millpond	At the confluence with Jacks Swamp	None	+72	Unincorporated Areas of Northampton County.
	Approximately 1,570 feet upstream of Big Johns Store Road (State Road 1300).	None	+89	
Cutawhiskie Creek	At the downstream side of Fennell Road (State Road 1155).	None	+52	Unincorporated Areas of Northampton County.
	Approximately 1.1 miles upstream of Eagletown Road (State Road 1522).	None	+65	
Tributary 3	Approximately 50 feet downstream of the Northampton/Hertford County boundary.	None	+51	Unincorporated Areas of Northampton County.
	Approximately 0.4 mile upstream of the Northampton/Hertford County boundary.	None	+53	
Tributary 4	At the confluence with Cutawhiskie Creek	None	+57	Unincorporated Areas of Northampton County.
	Approximately 0.7 mile upstream of the confluence with Cutawhiskie Creek.	None	+62	
Cypress Creek	At the confluence with Meherrin River	None	+45	Unincorporated Areas of Northampton County.
	Approximately 1.7 miles upstream of Julian Morgan Road.	None	+99	
Tributary 1	At the confluence with Cypress Creek	None	+52	Unincorporated Areas of Northampton County.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
	Approximately 1.6 miles upstream of the confluence with Cypress Creek.	None	+63	
Tributary 2	At the confluence with Cypress Creek	None	+68	Unincorporated Areas of Northampton County.
	Approximately 600 feet upstream of NC 186 Highway	None	+87	
Tributary 3	At the confluence with Cypress Creek	None	+70	Unincorporated Areas of Northampton County.
	Approximately 0.5 mile upstream of the confluence with Cypress Creek.	None	+79	
Tributary 4	At the confluence with Cypress Creek	None	+86	Unincorporated Areas of Northampton County.
	Approximately 1,480 feet upstream of Julian Morgan Road.	None	+97	
Fountains Creek	At the confluence with Meherrin River	None	+46	Unincorporated Areas of Northampton County.
	Approximately 4.3 miles upstream of the confluence with Meherrin River.	None	+51	
Grant Branch	At the confluence with Urahaw Swamp	None	+49	Unincorporated Areas of Northampton County, Town of Lasker.
	Approximately 1.4 miles upstream of Collier Road (State Road 1515).	None	+74	
Hunting Branch	At the confluence with Corduroy Swamp	None	+58	Unincorporated Areas of Northampton County.
	Approximately 20 feet downstream of Frank Harris Road (State Road 1343).	None	+70	
Ivy Creek	At the confluence with Cypress Creek	None	+84	Unincorporated Areas of Northampton County.
	Approximately 1.2 miles upstream of the confluence with Cypress Creek.	None	+89	
Jacks Swamp	At the North Carolina/Virginia State boundary	None	+68	Unincorporated Areas of Northampton County.
	Approximately 710 feet upstream of Interstate 95 (Southbound).	None	+135	
Tributary 1	At the confluence with Jacks Swamp	None	+69	Unincorporated Areas of Northampton County.
	Approximately 0.7 mile upstream of the confluence with Jacks Swamp.	None	+84	
Tributary 2	At the confluence with Jacks Swamp	None	+94	Unincorporated Areas of Northampton County.
	Approximately 2.0 miles upstream of the confluence with Jacks Swamp.	None	+121	
Tributary 3	At the confluence with Jacks Swamp	None	+100	Unincorporated Areas of Northampton County.
	Approximately 0.9 mile upstream of the confluence with Jacks Swamp.	None	+122	
Tributary 4	At the confluence with Jacks Swamp	None	+123	Unincorporated Areas of Northampton County.
	Approximately 870 feet upstream of Interstate 95 (Southbound).	None	+136	
Kirby Creek	At the confluence with Meherrin River	None	+17	Unincorporated Areas of Northampton County.
	At the confluence of Corduroy Swamp and Rogers Swamp.	None	+55	
Tributary 1	At the confluence with Kirby Creek	None	+19	Unincorporated Areas of Northampton County, Town of Severn.
	Approximately 0.9 mile upstream of NC Highway 35	None	+60	
Tributary 1A	At the confluence with Kirby Creek Tributary 1	None	+43	Unincorporated Areas of Northampton County.
	Approximately 0.6 mile upstream of the confluence with Kirby Creek Tributary 1.	None	+51	
Tributary 2	At the confluence with Kirby Creek	None	+44	Unincorporated Areas of Northampton County, Town of Conway.
	Approximately 1,280 feet upstream of Phillips Hill Road (State Road 1365).	None	+72	
Tributary 3	At the confluence with Kirby Creek	None	+50	Unincorporated Areas of Northampton County.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
	Approximately 80 feet downstream of Barnes Loop Road (State Road 1342).	None	+57	
Tributary 4	At the confluence with Kirby Creek	None	+51	Unincorporated Areas of Northampton County.
	Approximately 0.5 mile upstream of Barnes Loop Road (State Road 1342).	None	+70	
Meherrin River	At the confluence of Kirby Creek	None	+17	Unincorporated Areas of Northampton County.
	At the confluence of Fountains Creek	None	+46	
Occoneechee Creek Tributary 1.	At the confluence with Occoneechee Creek	None	+49	Unincorporated Areas of Northampton County.
	Approximately 0.9 mile upstream of the confluence with Occoneechee Creek.	None	+51	
Paddys Delight Creek	At the confluence with Potecasi Creek	None	+50	Unincorporated Areas of Northampton County.
	Approximately 1.1 miles upstream of the confluence of Paddys Delight Creek Tributary 1.	None	+77	
Tributary 1	At the confluence with Paddys Delight Creek	None	+66	Unincorporated Areas of Northampton County, Town of Conway.
	Approximately 140 feet downstream of Vann Street	None	+93	
Panther Swamp	At the Northampton/Hertford County boundary	None	+49	Unincorporated Areas of Northampton County.
	Approximately 1.1 miles upstream of Gilmer Ricks Road (State Road 1543).	None	+88	
Potecasi Creek	At the Northampton/Hertford County boundary	None	+36	Unincorporated Areas of Northampton County.
	At the confluences of Ramsey Creek and Wiccacanee Swamp.	None	+65	
Tributary 13	At the confluence with Potecasi Creek	None	+55	Unincorporated Areas of Northampton County.
	Approximately 0.7 mile upstream of the confluence with Potecasi Creek.	None	+61	
Tributary 14	At the confluence with Potecasi Creek	None	+57	Unincorporated Areas of Northampton County.
	Approximately 1,360 feet upstream of Lasker Road (State Road 1503).	None	+71	
Tributary 15	At the confluence with Potecasi Creek	None	+61	Unincorporated Areas of Northampton County.
	Approximately 100 feet downstream of Fire Tower Road (State Road 1500).	None	+69	
Tributary 15A	At the confluence with Potecasi Creek Tributary 15	None	+63	Unincorporated Areas of Northampton County.
	Approximately 0.5 mile upstream of the confluence with Potecasi Creek Tributary 15.	None	+73	
Tributary 16	At the confluence with Potecasi Creek	None	+62	Unincorporated Areas of Northampton County.
	Approximately 0.7 mile upstream of the confluence with Potecasi Creek.	None	+71	
Tributary 17	At the confluence with Potecasi Creek	None	+64	Unincorporated Areas of Northampton County.
	Approximately 0.8 mile upstream of the confluence with Potecasi Creek.	None	+74	
Tributary 9	At the confluence with Potecasi Creek	None	+44	Unincorporated Areas of Northampton County.
	Approximately 1.9 miles upstream of Ashley Grove Road (State Road 1536).	None	+68	
Quarter Swamp	At the confluence with Urahaw Swamp	None	+60	Unincorporated Areas of Northampton County.
	Approximately 1.7 miles upstream of W.J. Duke Service Road (State Road 1121).	None	+81	
Ramsey Creek	At the confluence with Potecasi Creek	None	+65	Unincorporated Areas of Northampton County, Town of Jackson.
	Approximately 580 feet downstream of Buck Howell Road (State Road 1316).	None	+124	
Tributary 1	At the confluence with Ramsey Creek	None	+69	Unincorporated Areas of Northampton County.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
	Approximately 40 feet downstream of NC Highway 305.	None	+79	
Reedy Creek	At the confluence with Kirby Creek	None	+34	Unincorporated Areas of Northampton County.
	Approximately 1,210 feet upstream of U.S. 158 Highway.	None	+55	
Rogers Swamp	At the confluence with Corduroy Swamp and Kirby Creek.	None	+55	Unincorporated Areas of Northampton County.
	Approximately 840 feet upstream of Tower Road (State Road 1341).	None	+88	
Tributary 1	At the confluence with Rogers Swamp	None	+55	Unincorporated Areas of Northampton County.
	Approximately 0.9 mile upstream of Britton Road (State Road 1337).	None	+67	
Tributary 2	At the confluence with Rogers Swamp	None	+61	Unincorporated Areas of Northampton County.
	Approximately 0.5 mile upstream of the confluence with Rogers Swamp.	None	+66	
Tributary 3	At the confluence with Rogers Swamp	None	+67	Unincorporated Areas of Northampton County.
	Approximately 0.7 mile upstream of the confluence with Rogers Swamp.	None	+80	
Tributary 4	At the confluence with Rogers Swamp	None	+69	Unincorporated Areas of Northampton County.
	Approximately 0.6 mile upstream of the confluence with Rogers Swamp.	None	+74	
Tributary 5	At the confluence with Rogers Swamp	None	+77	Unincorporated Areas of Northampton County.
	Approximately 0.7 mile upstream of the confluence with Rogers Swamp.	None	+89	
Sandy Run Tributary 3	At the confluence with Sandy Run	None	+37	Unincorporated Areas of Northampton County.
	Approximately 0.5 mile upstream of the confluence with Sandy Run.	None	+46	
Turkey Creek	At the confluence with Kirby Creek	None	+17	Unincorporated Areas of Northampton County.
	Approximately 1,060 feet upstream of U.S. 158 Highway.	None	+51	
Urahaw Swamp	At the confluence with Potecasi Creek	None	+43	Unincorporated Areas of Northampton County, Town of Woodland.
	Approximately 1.3 miles upstream of Bryantown Road (State Road 1108).	None	+66	
Tributary 4	At the confluence with Urahaw Swamp	None	+57	Unincorporated Areas of Northampton County.
	Approximately 1,300 feet upstream of Dick Harmony Road (State Road 1115).	None	+63	
Tributary 5	At the confluence with Urahaw Swamp	None	+64	Unincorporated Areas of Northampton County.
	Approximately 1.0 mile upstream of W.J. Duke Service Road (State Road 1121).	None	+71	
Wiccacanee Swamp	At the confluence with Potecasi Creek	None	+65	Unincorporated Areas of Northampton County.
	Approximately 1.2 miles upstream of U.S. Highway 158.	None	+107	
Wiccacanee Swamp Tributary.	At the confluence with Wiccacanee Swamp	None	+69	Unincorporated Areas of Northampton County.
	Approximately 0.6 mile upstream of the confluence with Wiccacanee Swamp.	None	+75	
Wildcat Swamp	At the confluence with Potecasi Creek	None	+54	Unincorporated Areas of Northampton County.
	Approximately 160 feet downstream of U.S. Highway 158.	None	+118	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Town of Conway

Maps are available for inspection at Conway Town Hall, 221 West Main Street, Conway, NC.

Town of Jackson

Maps are available for inspection at Jackson Town Hall, 100 East Jefferson Street, Jackson, NC.

Town of Lasker

Maps are available for inspection at Lasker Town Hall, 203A West Church Street, Lasker, NC.

Town of Severn

Maps are available for inspection at Severn Town Hall, 314 Main Street, Severn, NC.

Town of Woodland

Maps are available for inspection at Woodland Town Hall, 300 Spruce Street, Woodland, NC.

Unincorporated Areas of Northampton County

Maps are available for inspection at Northampton County Office, 108 West Jefferson Street, Jackson, NC.

Cumberland County, Pennsylvania, and Incorporated Areas

Conodoguinet Creek	Approximately 7250 feet upstream of dam	None	+481	Township of Lower Mifflin, Township of North Newton.
	Approximately 7000 feet upstream of dam	None	+481	
Dogwood Run	Approximately 500 feet upstream from intersection of Creek and Williams Grove Road.	None	+427	Township of Monroe.
	Approximately 1400 feet upstream from intersection of Creek and Williams Grove Road.	None	+433	
Hogestown Run	Approximately 200 feet downstream of Old Stone House Road.	None	+443	Township of Middlesex.
	Approximately at Old Stone House Road	None	+447	
Middle Spring Creek	Approximately at the confluence with Conodoguinet Creek.	None	+544	Township of Hopewell.
	Approximately 9590 feet downstream from Hale Road	+546	+547	
Yellow Breeches Creek	Approximately 700 feet downstream of Spangler's Mill Road.	None	+333	Township of Lower Allen.
	Approximately 7100 feet upstream of Spangler's Mill Road.	None	+342	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Township of Hopewell

Maps are available for inspection at 14 Hoover Drive, Newburg, PA 17240.

Township of Lower Allen

Maps are available for inspection at 1993 Hummell Avenue, Camp Hill, PA 17011.

Township of Lower Mifflin

Maps are available for inspection at 529 Shed Road, Newville, PA 17241.

Township of Middlesex

Maps are available for inspection at 350 Middlesex Road, Carlisle, PA 17013.

Township of Monroe

Maps are available for inspection at 1220 Boiling Springs, Mechanicsburg, PA 17055.

Township of North Newton

Maps are available for inspection at 255 Ott Road, Shippensburg, PA 17257.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Salt Lake County, Utah, and Incorporated Areas				
Midas Creek	Approximately 400 feet upstream of the Confluence with the Jordan River.	+4328	+4325	City of Riverton, City of South Jordan, Unincorporated Areas of Salt Lake County.
	Just upstream of 11800 South Street	+4569	+4566	
Willow Creek (West)	Just upstream of 11400 South Street	+4365	+4362	City of Draper.
	Just downstream of 300 East Street	+4441	+4442	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Draper

Maps are available for inspection at 1020 East Pioneer Road, Draper, UT 84020.

City of Riverton

Maps are available for inspection at 12830 S. Redwood Road, Riverton, UT 84065.

City of South Jordan

Maps are available for inspection at 1600 West Towne Center Drive, South Jordan, UT 84095.

Unincorporated Areas of Salt Lake County

Maps are available for inspection at 2001 South State Street #N2100, Salt Lake City, UT 84190.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: January 15, 2008.

David I. Maurstad,

Federal Insurance Administrator of the National Flood Insurance Program, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E8–1215 Filed 1–23–08; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–B–7739]

Withdrawal of Proposed Flood Elevation Determination for the Unincorporated Areas of Richland County, SC

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule; withdrawal.

SUMMARY: The Federal Emergency Management Agency (FEMA) withdraws the proposed flood elevation determination published October 16, 2007 for the Unincorporated Areas of Richland County, South Carolina (72 FR 58598).

DATES: The proposed flood elevation determination published on October 16, 2007 at 72 FR 58598, the September 12, 2007 Physical Map Revision, and the November 1, 2007 to January 31, 2008 appeal period associated with the withdrawn proposed flood elevation determinations are withdrawn as of January 24, 2008.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151 or e-mail *bill.blanton@dhs.gov*.

SUPPLEMENTARY INFORMATION: On September 12, 2007, FEMA issued Preliminary Flood Insurance Rate Maps (FIRMs) through a Physical Map Revision to identify flood hazards along the Congaree River in the Unincorporated Areas of Richland County, South Carolina, hereafter referred to as ''Richland County''. On October 16, 2007, FEMA published a proposed rule at 72 FR 58598, October 16, 2007 proposing flood elevation determinations along the Congaree River in Richland County. On October 17, 2007, FEMA issued a letter to the Chairman of the Richland County Council explaining that the appeal period for the proposed flood elevation determinations would begin on November 1, 2007 and end on January 31, 2008.

The purpose of this **Federal Register** publication is to withdraw the proposed flood elevation determination published October 16, 2007 at 72 FR 58598 for the Unincorporated Areas of Richland County, South Carolina. This document also provides notice that FEMA has withdrawn the September 12, 2007 Physical Map Revision and canceled the November 1, 2007 to January 31, 2008 appeal period associated with the withdrawn proposed flood elevation determinations. The reason for this withdrawal and cancelation is to address a federal district court's November 14, 2007 finding that the October 16, 2007 notice proposing new flood elevation determinations for the Congaree River in the unincorporated areas of Richland County did not comply with the Court's November 18, 2005 Order of Vacatur. FEMA intends to initiate a new revision and propose new flood hazard information; however, affected areas should utilize the effective flood hazard information, in

accordance with the November 18, 2005 Order of Vacatur, until such time as updated flood hazard information is proposed by FEMA.

Regulatory Classification. Since this notice withdraws a notice of proposed rulemaking, it is neither a proposed nor a final rulemaking and therefore is not within the scope of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735 or the Regulatory Flexibility Act, 5 U.S.C. 601–612.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are amended to withdraw the following:

The proposed flood elevation determination published in 72 FR 58598, October 16, 2007 for the Unincorporated Areas of Richland County, South Carolina.

Dated: January 15, 2008.

David I. Maurstad,

Federal Insurance Administrator of the National Flood Insurance Program, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E8–1209 Filed 1–23–08; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 574

[Docket No. NHTSA–2008–0014]

RIN 2127–AK11

Tire Registration and Recordkeeping

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: Our regulation for tire identification and recordkeeping requires manufacturer owned tire distributors and dealers to register the names and addresses of the people to whom they sell or lease new tires, and specifies the use of standardized paper forms for this purpose. It also requires independent distributors and dealers to provide purchasers with standardized registration forms they can complete and mail to the manufacturer or its designee.

We propose to amend the regulation by codifying existing interpretations regarding opportunities under the regulation for electronic registration of tire sales and leases and by creating new opportunities. The names and addresses of purchasers and lessees are used by a tire manufacturer to contact those people in the event that the manufacturer must conduct a campaign to recall and remedy tires that either fail to comply with an applicable Federal motor vehicle safety standard or have a safety-related defect.

DATES: Comments must be received on or before March 24, 2008.

ADDRESSES: You may submit comments to the docket number identified in the heading of this document by any of the following methods:

- *Federal eRulemaking Portal:* go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Mail:* DOT Docket Management Facility, M–30, U.S. Department of Transportation, West Building, Ground Floor, Rm. W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. Eastern time, Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2551.

Regardless of how you submit your comments, you should mention the docket number of this document.

You may call the Docket Management Facility at 202–366–9826.

Privacy Act: Please see the Privacy Act heading under Rulemaking Analyses and Notices.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to: *http://www.regulations.gov*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, Mr. Jeff Woods, Vehicle Dynamics Division, Office of Vehicle Safety Standards (Telephone: 202–366–6206) (Fax: 202–366–7002). Mr. Woods' mailing address is National Highway Traffic Safety Administration, NVS–122, 1200 New Jersey Avenue, SE., Washington, DC 20590.

For legal issues, Ms. Dorothy Nakama, Office of the Chief Counsel (Telephone: 202–366–2992) (Fax: 202–366–3820). Ms. Nakama's mailing address is National Highway Traffic Safety Administration, NCC–112, 1200 New Jersey Avenue, SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

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I. Background

A. Tire Registration Requirements

As originally enacted, the National Traffic and Motor Vehicle Safety Act of 1966 (now codified at Title 49 U.S.C. Chapter 301 *Motor Vehicle Safety*) did not include a requirement for tire registration. However, in May 1970, Congress amended the law to mandate that every tire manufacturer shall maintain records of the names and addresses of the first purchaser of tires produced by that manufacturer.[1] NHTSA was given the authority to establish procedures to be followed by manufacturers in establishing and maintaining such records, including

[1] Pub. L. 91–265.

procedures to be followed by distributors and dealers to assist manufacturers in securing the names and addresses of first purchasers.

Pursuant to this authority, in a final rule published in the **Federal Register** (35 FR 17257) on November 10, 1970, NHTSA established the initial tire identification and recordkeeping requirements of 49 CFR part 574. The rule required all tire dealers to record the name and address of the purchaser to whom they sold the tire, along with the dealer's name and address, and forward that information to the tire manufacturer.

However, under the Motor Vehicle Safety and Cost Savings Authorization Act of 1982 (Pub. L. 97–331), Congress amended the Safety Act to mandate that the obligations of independent distributors and dealers be limited to giving ''a registration form (containing the tire identification number) to the first purchaser.'' The tire purchaser could then mail the form to the tire manufacturer. Congress also mandated that NHTSA should prescribe a standardized registration form and that tire manufacturers had to ensure that they gave sufficient copies of these forms to their dealers.

Congress adopted these amendments after the House Committee on Energy and Commerce found in its report on the 1982 amendments that tire dealers whose business was owned or controlled by a tire manufacturer (these dealers accounted for just under 1/3 of tire sales) registered between 80 and 90 percent of the tires they sold.[2] However, independent tire dealers, which accounted for more than 2/3 of tire sales, registered only 20 percent of the tires they sold.

The changes mandated by the 1982 amendments were established in an interim final rule published on May 19, 1983 (48 CFR 22572). The regulation required tire manufacturers to provide both independent and non-independent distributors and dealers with standardized tire registration forms. The regulation specified the exact content of the forms given to independent distributors and dealers. No other information may appear on the forms.[3] When an independent distributor or dealer sells or leases a tire to a consumer, the distributor or dealer must fill in the tire identification number and its name and address on a registration form and give the form to the consumer. The consumer may then fill in his or her name and address, add a stamp and mail the form to the manufacturer or its designee. In a follow-up final rule published on February 8, 1984 (49 FR 4755), the agency made slight revisions to the tire registration form to improve its clarity and also reduced the size of the form so that it could be mailed using post card postage.

As part of the agency's implementation of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act (Pub. L. 106–414) that was enacted on November 1, 2000, the agency increased the tire registration record retention requirements for tire manufacturers from three years to five years. The record retention period was extended in a final rule published in the**Federal Register** (67 FR 45822) on July 10, 2002.

B. Rate of Tire Registration

In the Motor Vehicle Safety and Cost Savings Authorization Act of 1982, Congress directed NHTSA to conduct an evaluation after two years of voluntary registration to determine the extent to which the voluntary registration procedures for independent dealers were successful in increasing the registration of tires.[4] NHTSA was also charged with determining the extent to which independent dealers have encouraged purchasers to register their tires and the extent to which independent dealers have complied with the new procedures. Finally, NHTSA was charged with deciding whether to impose any additional requirements to ''significantly increase'' registration of tires sold by independent dealers.

Per that Congressional directive, NHTSA reported on its evaluation of voluntary tire registration by independent dealers in 1985 and 1987.[5] We found that:

1. Registration rates for independent dealers declined by half, from 18.1 percent under previous law to 9.3 percent under voluntary registration.
2. Registration rates for company stores had remained steady at 86 percent during this same period.
3. Tire manufacturers had provided plenty of registration forms.
4. There were no records of any tire registrations for more than 70 percent of the independent dealers.

From this, NHTSA reached the conclusion that many independent dealers did not routinely give registration forms to tire purchasers. NHTSA stated that we did not think it would be the best use of our enforcement resources to bring compliance actions against independent tire dealers. Instead, NHTSA proposed in 1986[6] four potential steps to improve tire registration by independent dealers:

1. Require prepaid postage on the registration form; and/or
2. Undertake a public education campaign and a brief explanation of the tire registration process in tire information pamphlets; and/or
3. A central clearinghouse for all registration forms distributed to consumers by independent dealers; or
4. Rescind the tire registration requirements and allow tire manufacturers to devise their own contractual ways of ensuring they meet the statutory obligation for tire manufacturers to ''establish and maintain records of the names and addresses of first purchasers.''

After reviewing the pubic comments, NHTSA published a termination of rulemaking notice in November 1988[7] announcing that none of the four suggestions had been demonstrated to likely significantly increase the level of tire registration by independent dealers under voluntary registration. NHTSA also noted that the agency would continue to rely on media and public announcements to alert the public of tire recalls, so public safety would not be jeopardized by the low registration rate for tires sold by independent dealers.

Although the agency has not conducted a subsequent evaluation, it believes that the registration rate for tires sold or leased by independent distributors and dealers remains largely unchanged. In a submission sent to the agency earlier this year, the Rubber Manufacturers Association (RMA) indicated that the return rate for the mail-in registration cards is no more than 10 percent.[8]

C. Increasing the Effectiveness and Reducing the Cost of Tire Registration Through Electronic Registration

1. 1984 Interpretation to Representative Wirth

In 1984, Representatives Wirth and Rinaldo wrote a letter to the agency expressing several concerns. First, they noted that the agency had stated in a recent rulemaking that the Vehicle Safety Act did not permit independent

[2] H.R. Rep. No. 576, 97th Cong. 2d Sess. 8–9 (1982).

[3] July 18, 2003 letter from Jacqueline Glassman to Ann Wilson of RMA. Letter is available at: *http://isearch.nhtsa.gov/files/onlinetireregistration.html.*

[4] See Motor Vehicle Safety and Cost Authorization Act of 1982, Pub. L. 97–331.

[5] For a discussion of NHTSA's Evaluation Reports on Voluntary Tire Registration, see 53 FR 44632–33, November 4, 1988.

[6] Advance note of proposed rulemaking; 51 FR 45916; December 23, 1986.

[7] Termination of rulemaking; 53 FR 44621, November 4, 1988.

[8] Docket NHTSA–2006–26554–3.

dealers to return the mail-in registration cards directly to the manufacturer without first providing the form to the purchaser with the required information filled in by the dealer. Second, they expressed support for computerized tire registration and argued that the 1982 amendments to the Vehicle Safety Act should be interpreted as permitting independent dealers to give the purchaser a mail-in registration form on which they had not filled in any of the required information if they attached to the form a copy of the computerized invoice bearing that information.

In its response, the agency stated while a literal interpretation of the 1982 amendments would not permit independent dealers to do that, under an equitable interpretation, they would be.[9] Under the principles of equitable interpretation, a statutory requirement need not be literally applied in instances in which the underlying Congressional intent is otherwise satisfied. The agency stated:

Based on the principles of equitable interpretation, we believe that an independent tire dealer or distributor who

(1) Registers tires by computer;

(2) Attaches a computer-printed invoice containing all of the information necessary for registration to a blank standardized registration form; and

(3) Furnishes the two documents to the customer when the tires are purchased;

fully satisfies the tire registration amendments.

2. 2003 Interpretation to RMA

On July 18, 2003,[10] the agency responded to a letter from RMA asking whether Part 574 permits tire manufacturers to offer electronic registration in addition to the required mail-in form. RMA stated that it wanted to provide independent tire distributors and dealers with a supplemental form that notifies consumers that they may also register their tires by electronic means, e.g., by directing the consumer to a Web site or a toll-free telephone registration line. In support of its request, RMA noted that the agency had recently concluded that child restraint manufacturers could provide consumers with a supplemental form encouraging electronic registration.[11] RMA said that no more than 10 percent of tire registration cards were being returned to the manufacturers and that the information was often incomplete or the writing illegible. RMA expressed the belief that offering tire registration via the internet, by telephone or other electronic means would improve the registration rate and aid manufacturers in fulfilling their notification obligations.

In its response, the agency said it agreed that the rationales in its letters relating to child restraint registration were also applicable to tire registration. The agency concluded that Part 574 permits the provision of information about electronic registration as a supplement to the required mail-in form for independent distributors and dealers.

Likewise, as to non-independent distributors and dealers, the agency said that electronic registration could be offered to them. The agency cautioned, however:

This interpretation does not relieve non-independent distributors and dealers from the requirements of section 574.8(b) that they themselves record the purchaser's name and address, the tire identification number(s) of the tire(s) sold, and a suitable identification of themselves as the selling dealer on a tire registration form and return the completed forms to the tire manufacturers or their designees. While we would interpret Part 574 to permit non-independent distributors and dealers to accomplish these tasks by electronic means, they may not transfer this responsibility to consumers.

3. 2005–2007 Issues Regarding Clearance of the Tire Registration Requirements Under the Paperwork Reduction Act

The information collected by tire dealers from tire purchasers and retained by tire manufacturers is considered to be a ''collection of information'' [12] as defined by the Office of Management and Budget (OMB). The significance of this definition is that approval of the ''collection of information'' is subject to OMB review. OMB has promulgated 5 CFR Part 1320 ''Controlling Paperwork Burdens on the Public.'' OMB states that the purpose of Part 1320 is to implement the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) (PRA) concerning collections of information. The procedures established in Part 1320 are designed to ''reduce, minimize and control burdens and maximize the practical utility and public benefit of the information created, collected, disclosed, maintained, used, shared and disseminated by or for the Federal government.''

Before a Federal agency can collect certain information from the public (which includes the Federal government's directing that the information be collected from new tire purchasers by tire dealers to give to tire manufacturers, also called third-party information), it must receive approval from OMB. If OMB approves a collection of information, it assigns an OMB control number and an expiration date. OMB will not ''approve any collection of information for a period longer than three years.'' (See 5 CFR section 1320.12(e)(1).) The OMB control number assigned to the Part 574 collection of information is 2127–0050. The current status of OMB's approval is available online at *http://www.reginfo.gov/public/do/PRASearch*.

Because the Part 574 collection of information requirements are longstanding, we have, for many years, asked for and been granted, OMB approval to collect the information. As part of the periodic process to request OMB to renew approval of an existing collection of information, on December 28, 2005, we published in the **Federal Register** (70 FR 76909) an announcement that NHTSA planned to ask OMB for a renewal of approval to collect the Part 574 information, and sought public comment on the proposed renewal.

We received two comments in response. The first was from the National Automobile Dealers Association (NADA). NADA represents 20,000 franchised automobile and truck dealers that act as independent tire dealers when they sell tires to consumers under differing situations. The second comment was from Tire Recall Registry, Inc. (TRR). It raised several issues, most of which were related to its advocating electronic registration of tires. TRR cited the July 18, 2003 NHTSA interpretation letter to RMA in which NHTSA stated that information about and opportunities for electronic registration could be used to supplement the paper form specified by Part 574. TRR stated its belief that requiring paper forms resulted in an unnecessary burden under the OMB regulations at 1320.3(b)(1), given that electronic means could be used instead, thus reducing the collection of information burden.

On August 31, 2006, OMB renewed the collection of information for Part 574 for a period of six months, instead of three years due to its concerns about the burdens associated with tire registration. OMB posed several questions for the agency to answer regarding DOT's compliance with PRA requirements, the effectiveness rates of

[9] February 1983 letter from Diane K. Steed to the Honorable Timothy E. Wirth. Letter is available at: *http://isearch.nhtsa.gov/gm/83/1983–1.12.html*.

[10] July 18, 2003 letter to Ann Wilson of RMA.

[11] Letter to John K. Stipancich, January 3, 2003; letter to Mark A. Rosenbaum, Esq., April 12, 2001.

[12] See 5 CFR 1320.3(a)(3).

the tire registration requirements, possible means to reduce the paperwork burden and encourage tire dealers and purchasers to register tires by permitting electronic registration, and a discussion of alternatives that might be permitted for electronic registration, including the use of electronic registration in lieu of the paper mail-in form. The questions were to be answered as part of NHTSA's next request to renew the Part 574 collection of information. On December 8, 2006, NHTSA published a **Federal Register** document (71 FR 71238) [13] seeking comments on the OMB questions and proposing to renew the Part 574 collection of information.

In response to the December 2006 document, five organizations submitted comments. In addition to comments from RMA and NADA, comments were submitted by Computerized Information and Management Services, Inc. (CIMS), National Tire Registry Recall.com (NTRR), and the Tire Industry Association (TIA). Except for CIMS, all commenters supported efforts to expand the methods of registering new tire purchaser information to include Web site registration by the purchaser and electronic registration performed by independent tire dealers.

RMA stated that the continued registration of new tire purchasers is a critically important safety issue so that purchasers can be notified in the event of a product recall or other safety problem. It urged NHTSA to either interpret or revise Part 574 to allow an electronic alternative to the current paper card system. RMA said that it has data showing that less than 10 percent of tire registration cards [from independent tire dealers] are currently being returned to the tire manufacturer and many of these cards are inaccurate, incomplete, or illegible. RMA asked NHTSA to interpret or amend the current regulations in the following areas:

1. Modify Part 574 to permit tire distributor or dealer either (a) to provide consumer with the paper registration form bearing instructions about the opportunity to register the tires at the tire manufacturer's Web site or (b), on a voluntary basis, to register the tires electronically at point of sale (without having to provide any type of registration form to the consumer).

2. The current regulation only requires [independent] distributors to provide the form to first purchasers with the tire identification number and the dealer's name and address. Any revisions to the regulations to permit electronic or point-of-sale registration should not create any new or additional obligations for tire dealers or distributors by requiring them to register the tires.

3. The tire manufacturer's obligations should remain the same. They should only be required to continue to provide the paper forms to tire dealers and distributors and, upon receipt of the forms, retain the purchaser information for five years.

4. Through a NHTSA interpretation letter, a supplemental form regarding electronic tire registration is permitted. However, the agency should amend its regulations to permit information about such registration to be placed directly on the existing paper registration form.

NADA generally supported the RMA comments regarding permitting Web site registration of tires, and referred to the agency's provisions for electronic registration of child safety seats in 49 CFR 571.213 as being instructive in this regard. In addition to allowing registration by Web site or fax, NADA stated that tire dealers should also be permitted to register the tires for the purchaser, upon obtaining permission or a release from the purchaser to do so.

NADA noted that it has stated in the past that franchised automobile and truck dealers act as independent tire dealers as well. Commenting on past NHTSA announcements of intent to renew the Part 574 collection of information, NADA questioned in those prior renewals, and also in the current one, NHTSA estimates of 12,000 new tire dealers and distributors, when NADA stated that there are 20,000 franchised automobile and truck dealers.

CIMS stated that it provides tire registration services to over 80 percent of tire manufacturers/brand owners in the replacement tire market and to over 12,000 tire dealers and distributors. CIMS is opposed to making changes to the existing tire registration regulations. CIMS stated that the current tire registration regulations are working, and that independent tire dealers using the CIMS All Brand Form can comply with the tire registration regulation for one penny or less per tire. It stated that allowing electronic registration of tires will only cause more confusion, will remove the tire purchasers' rights and ability to ensure that their tires are registered, and will increase the liability of independent tire dealers if the tire registration information is not completely transmitted to the tire manufacturer or if they jeopardize the privacy of tire purchaser information.

CIMS indicated that tire registrations by year are as follows:

1997—37,000,000
2000—41,000,000 (Prior to Ford/Firestone recall)
2003—54,000,000 (Corresponds with NHTSA estimates, Docket No. 06–26554)
2006—59,000,000

CIMS stated that there will be added costs associated with electronic tire registration including developmental costs, software upgrades and employee training. CIMS did not provide any specific cost estimates.

NTRR stated its belief that changes are needed and that electronic registration would enhance public safety, and would be consistent with Paperwork Reduction Act priorities. NTRR stated that allowing electronic registration as an alternative, not merely as a supplement, would improve registration rates over the current methods. NTRR stated that the July 18, 2003 interpretation letter from NHTSA to RMA leaves unanswered the extent to which electronic registration and other alternatives to paper forms can be used in compliance with 49 CFR part 574. NTRR also stated that the tire registration form specified in Part 574 does not display the required OMB control number, and suggested that NHTSA does not adequately address privacy and confidentiality concerns under the PRA.

TIA stated that it has worked closely with the RMA in reviewing the need to revise the current tire registration regulations in 49 CFR part 574, and that it agrees with the four principles identified by RMA for revisions to the regulations. TIA stated that any revisions to the regulations should not create any new or additional obligations for tire dealers and thus should not require the tire dealers to register the tires. TIA stated that many TIA member tire dealers endorse electronic registration and are making electronic registration of new tires possible. TIA recommended that NHTSA adopt the changes recommended by RMA as quickly as possible.

In an additional **Federal Register** document on March 21, 2007 (72 FR 1334) [14] in which we asked that if the public had additional comments, to provide the comments directly to OMB by April 20, 2007, we provided a summary of the comments in response to the December 2006 document. In this March 2007 document, NHTSA specifically stated that we are:

* * * considering revisions to update 49 CFR part 574 to provide, to the extent consistent with the agency's authority, allowances for electronic and other possible means of registering new tires at the point of

[13] Docket No. NHTSA–06–26554.

[14] Docket No. NHTSA–06–26554.

sale. First, the agency will consider the inclusion of Web site registration information to be placed on the tire registration form in 574.7. Second, the agency plans to update the registration form to include the OMB control number. Third, the agency will fully evaluate what appropriate regulations are permissible to allow independent tire dealers to electronically register the tires on a voluntary basis for the consumer, within the requirements specified in Title 49, U.S.C. Chapter 301, Section 30117—providing information to, and maintaining records on, purchaser.

Therefore, the agency will undertake rulemaking in 2007 to address these issues and provide the public with the opportunity to comment on the proposed changes. (See 72 FR at page 13345)

As stated in the March 2007 notice, the agency is now proceeding with rulemaking to consider allowing registration via the internet or other electronic means for new tire purchasers.

II. Need for Rulemaking

NHTSA is proposing to amend the Part 574 tire registration procedures to facilitate internet and other electronic registration of tires, including voluntary registration of tires by independent tire dealers. We believe this rulemaking is needed to ensure that the regulation permits, to the extent consistent with the agency's authority, the use of new technologies in registering tires. In addition to potentially reducing costs, the procedures could also result in improved tire registration rates. A higher new tire registration rate would help in the identification of first purchasers of defective or nonconforming tires, so that the purchasers may take appropriate action in the interest of motor vehicle safety. As described below, NHTSA's most recent data on tire registration rates were included in a termination of rulemaking notice published in the **Federal Register** on November 4, 1988 (53 FR 44632).

As discussed earlier, NHTSA found in a 1985 study that under the mandatory tire registration program for independent tire dealers, the registration rate was 18.1 percent. In 1987, NHTSA found that, under the voluntary independent tire dealer registration program, the tire registration rate among independent tire dealers had decreased to 9.5 percent. If the number of tires registered using computers is subtracted from 9.5 percent, the return rate for paper tire registration forms was only 8 percent. In 1987, the tire registration rate for tires sold by company-controlled dealers was found to be greater than 86 percent.

We have not performed additional surveys on tire registration rates since 1987. However, February 6, 2007 comments from RMA stated that ''no more than 10 percent of tire registration cards are currently returned to manufacturers and a significant number of these cards are inaccurate, incomplete or illegible.'' Thus, regarding the response rate to paper forms for new tires sold through independent dealers, the agency believes that tire registration rates have not changed substantially for the past 20 years.

For these reasons, the agency does not agree with those that believe the current paper-form based tire registration program is effective. Even if electronic registration does not result in significantly more purchaser responses (for new tire sales through independent dealers), NHTSA believes the overall effectiveness rate of tire registration would improve, because voluntary electronic registration would eliminate illegibility or other ambiguity caused by hand-written information. For purchasers who do not like to fill in information by hand, electronic registration could also reduce the overall burden of registration.

III. Today's Notice of Proposed Rulemaking

After carefully reviewing the public comments to NHTSA's December 2006 publication of the announcement of its request to OMB to extend approval of the Part 574 tire registration collection of information, we have concluded that Part 574 should be amended to facilitate internet and other electronic registration of tires, including voluntary registration of tires by independent tire dealers. Our proposal follows an approach similar to the ones suggested by RMA and NADA.

Specifically, under our proposal:

- Independent tire dealers could, in lieu of providing a paper registration form to the consumer, voluntarily register a tire by internet or other electronic means, so long as such means were authorized by the tire manufacturer. These dealers would also have the option of providing to the consumer the mailable standardized paper registration form that includes the tire identification number (TIN) and the dealer's name and address (this is the current requirement set forth in Part 574), or using the same standardized paper registration form, but voluntarily completing the form and registering the tire by sending the form to the tire manufacturer or its designee.
- The standardized paper registration form would be permitted to identify a Web site authorized by the tire manufacturer at which the consumer could register the tires instead of mailing in the form.
- We are proposing to remove the figures showing the standardized paper registration form from the CFR. Some requirements that were expressed by referring to the forms in the regulatory text would be added to the regulatory text, but the regulation would no longer specify as many details concerning the format of the forms.
- We are also proposing regulatory text that would make it clear that dealers owned or controlled by tire manufacturers may register tires by electronic means, consistent with a past interpretation. The figure showing the form used for these tires would also be removed.

Our proposal would not impose new obligations on tire dealers or tire manufacturers. Instead, it would accommodate and facilitate internet and other electronic registration of tires, including voluntary registration of tires by independent dealers. We note that are proposing a provision that would clarify that tire manufacturers must meet requirements concerning retention of information for registration information submitted to them by electronic or other means they authorize, in addition to that submitted to them on the standardized paper forms.

The details of our proposal are discussed below.

A. Tires Sold by Independent Tire Dealers—Alternative Means of Tire Registration

As noted in our March 2007 document, we are considering revisions to update 49 CFR part 574 to allow, to the extent consistent with the agency's authority, for use of electronic and other possible means of registering new tires at the point of sale.

The statutory requirements relevant to independent tire dealers are found at 49 U.S.C. 30117(b)(2)(B), which reads as follows:

> The Secretary shall require each distributor and dealer whose business is not owned or controlled by a manufacturer of tires to give a registration form (containing the tire identification number) to the first purchaser of a tire. The Secretary shall prescribe the form, which shall be standardized for all tires and designed to allow the purchaser to complete and return it directly to the manufacturer of the tire. The manufacturer shall give sufficient copies of forms to distributors and dealers.

Not surprisingly, given the pre-internet date of enactment of the statute, the statutory provision appears to contemplate a mail-in paper form (''the

manufacturer shall give sufficient copies of forms to distributors and dealers''). Also, the legislative history (House report) [15] refers to forms that are suitable for mailing and addressed to the manufacturer or its designee.

One relevant issue is the effect of voluntary tire registration by independent tire dealers on their obligations under section 30117(b)(2)(B). While the statute provides for a program in which purchasers of tires from independent tire dealers may register their tires by returning a form to the tire manufacturer, NHTSA's letter to Congressman Timothy Wirth [16] addressed the situation in which independent tire dealers may wish to register tires voluntarily for consumers. Invoking the principles of equitable interpretation, the agency concluded that voluntary registration would partially relieve independent dealers of their statutory obligations. Under those principles, a statutory requirement need not be literally applied in instances in which the underlying Congressional intent is otherwise satisfied. More specifically, the agency stated:

> Based on the principles of equitable interpretation, we believe that an independent tire dealer or distributor who (1) registers tires by computer; (2) attaches a computer-printed invoice containing all of the information necessary for registration to a blank standardized registration form; and (3) furnishes the two documents to the customer when the tires are purchased; fully satisfies the tire registration amendments. * * *

While, as discussed below, we now believe that this interpretation goes to some extent beyond what is necessary to satisfy Congressional intent, we believe the basic principle is correct. In particular, if an independent tire dealer voluntarily registers tires for the consumer, it serves no purpose to require the full procedures necessary to enable consumers to also register those tires.

Several other issues are whether the statute can be interpreted to permit the use of electronic forms in lieu of paper forms and, assuming that the answer to that issue is ''yes,'' the meaning of the statutory command to ''* * * give a registration form (containing the tire identification number) to the first purchaser * * *'' in the context of electronic forms. As to the term ''form,'' it could be interpreted broadly enough to include electronic as well as paper forms, notwithstanding the statutory language and legislative history mentioned above that suggests the forms are to be paper ones.

As to the term ''give,'' it could readily be interpreted in the context of the statute to mean physically provide either ''take away'' means of registration (i.e., mailable form) or means of ''on-the-spot'' registration (i.e., an in-store computer terminal accessible to purchaser). It is not apparent how the term could be further interpreted to mean simply inform the purchaser about the opportunity to use means not physically present in the dealer's store (e.g., use of a computer terminal located at the purchaser's home or elsewhere.) It is even less apparent how such further interpretation could be given the term ''give'' given the additional requirement that the form given the purchaser ''* * * contain the tire identification number * * *''

A possible scenario that could be viewed as meeting all of the statutory requirements would be one in which the purchaser was provided access to a computer at the dealership where the screen showed the form with the tire identification numbers already filled in, and the purchaser could register the tires with the manufacturer by entering his or her name and address and clicking on a button to register the tires. We do not know whether manufacturers and dealerships would be interested in an option along these lines, but note that we are requesting comments below on this type of approach. We also note that a number of approaches for electronic registration by purchasers would appear not to meet these statutory requirements, but could be viewed as supplemental means of transmitting tire registration to manufacturers.

In light of the above discussion and in considering alternative means for registration of tires sold by independent dealers, we believe: (1) The regulation must include a basic procedure consistent with the statutory requirement that enables purchasers of tires from independent tire dealers to register their tires by returning a form with the TIN already filled in to the tire manufacturer; (2) the regulation may provide options under which an independent tire dealer may voluntarily register tires for consumers, in which case the dealer need not meet the full procedures necessary to enable consumers to register those tires; and (3) the regulation may accommodate means that tire manufacturers may provide for tire registration (e.g., internet registration) that consumers may use instead of mailing in the form.

Voluntary registration by independent dealers.

As indicated above, after reviewing our 1984 interpretation to Congressman Wirth, we now believe that it went to some extent beyond what was necessary to satisfy Congressional intent. In particular, the agency believes that electronic registration of the tires by independent dealers would satisfy the statutory requirements, without the need to provide an additional blank form to the purchaser. The purpose of the statutory requirement is to enable the purchaser to register the tire purchase with the manufacturer. As such, if the dealer registers the tires electronically for the purchaser and provides a blank form to the purchaser, confusion could result, since the purchaser might think there was a need to submit the paper form to the manufacturer.

Regarding the statement in the interpretation that the purchaser be given a computer-printed invoice with the information on the tire registration paper form, the agency now believes that statement also exceeds what is necessary. The tire registration information is kept by the tire manufacturer (or its designee). There is no need for the dealer or purchaser to retain that information, and NHTSA has no record retention requirement for either tire dealers or tire purchasers. Instead of duplicating the required information on the invoice given to the purchaser, the agency believes that a written statement on the invoice regarding the registration of the tires by the dealer would be sufficient to inform the consumer that the tires have been registered.

We are therefore proposing that independent tire dealers have the option of voluntarily electronically registering tires with the tire manufacturer. We note, however, that whether this option can be used depends on the tire manufacturer's providing a means to receive this information electronically, or designating an agent to do so for it. The agency is not aware of what specific means might be used to provide electronic registration, such as specific software that identifies tire sales and then automatically uses the internet to transmit the information to the tire manufacurer or its designee. However, the agency believes that many company-controlled tire dealers have autonomous systems in place to register the tires as part of the sale transaction. Such systems do not require additional or separate actions by sales personnel to register the tires. The agency welcomes additional details on the methods that are currently in place and also other

[15] H.R. Rep. No. *97–576*, p. 8.

[16] February 1983 letter from Diane K. Steed to the Honorable Timothy E. Wirth. Letter is available at: *http://isearch.nhtsa.gov/gm/83/1983–1.12.html.*

methods that might be used, including how independent tire dealers may be able to register tires electronically.

Our proposal also includes an option in which independent tire dealers could use the standardized paper registration form, but voluntarily complete the form and register the tires by sending the form to the tire manufacturer or its designee.

One issue that arises with independent dealers being permitted to register tires voluntarily for consumers is whether they could charge a separate registration fee. We have tentatively concluded that this should not be permitted, as it could discourage registration and cause confusion. We request comments on this issue.

Another issue that arises with electronic registration of tires is the security of the information being transmitted. The proposed regulatory text would require that electronic registration be by secure means, e.g., use of https on the web. We request comments on the need for such a provision, and whether it should be more specific. We note that in September 2005 we decided not to include an ''encryption'' requirement for electronic registration of child safety seats.[17] We may or may not adopt a requirement concerning secure means for electronic registration of tires, but would like to have the benefit of public comments before reaching a decision.

Regarding CIMS' comment that additional burden would shift to the tire dealer if it decided to use electronic registration, NHTSA notes that registration by independent tire dealers would be voluntary. Nothing in this rulemaking would require independent tire dealers to register tires for the purchaser.

NADA's comments regarding an optional electronic registration program stated that the tire dealer should obtain permission or a release from the purchaser before being permitted to register the tires on behalf of the purchaser. The agency believes that this would create an additional collection of information or other burden that would not be necessary if, instead, a registration statement is provided to the purchaser indicating that the tire dealer is performing tire registration for the purchaser. We also observe that such releases are not required for tire dealers controlled by tire manufacturers, which are required to register tires for consumers.

For the new electronic registration requirements, NHTSA also proposes to permit the tire manufacturer to designate a third party to collect or store the tire registration information. Such third party designation is currently allowed for the paper registration forms under 574.7, and NHTSA is not aware of any reason not to extend third party designation to electronic tire registrations methods. Since we do not have any detailed information on how designees would collect and retain tire registration information, the agency welcomes additional details that would assist the agency in establishing requirements.

Alternative means of registration by tire purchasers.

Consistent with our interpretation letter to RMA, we are including in the proposed regulatory text a provision stating that tire manufacturers may voluntarily provide means for tire registration via the internet, by telephone or other electronic means.

RMA and NADA commented that the tire registration paper form should be allowed to include instructions for purchasers about registering tires directly on the tire manufacturer's Web site. NADA stated that the electronic registration provisions for child safety seats in FMVSS No. 213 are instructive about the value of permitting this. TIA stated that it agreed with the four principles for new tire registration requirements described by RMA (one of which is to allow Web site registration). NTRR's comments did not specifically address putting Web site information on the paper form.

The agency tentatively agrees that including, at the tire manufacturer's option, a Web site address for purchasers to register tires could facilitate registration for tire purchasers, and also improve the quality of information received by the tire manufacturer. As RMA stated, many of the paper registration forms that are received by tire manufacturers are inaccurately filled out, incomplete, or illegible. By allowing purchasers to type in the information directly on the tire manufacturer's Web site, the issue of illegibility should be eliminated.

NHTSA checked several tire manufacturers' Web sites, for both widely-known tire brands and lesser-known tire brands, and found in all but one case that the tire manufacturers already have Web site-based tire registration capability. Inclusion of Web site registration information would be performed at the option of the tire manufacturer. We are proposing simple text to keep information on the form to a minimum: ''Instead of mailing this form, you can register online at [insert tire manufacturer's Web site address]''. This proposed language deviates slightly from the FMVSS No. 213 text that includes references to registering online on both sides of the form, although the text on the mailing label side of that form is on a part of the form that is removed prior to mailing. However, the tire registration form is not of that design, and much of the form space is needed for recording the tire identification numbers. We welcome comments on the proposed text and location of the optional Web site registration information.

We request comments on whether information about other possible means of supplemental registration should be permitted to be placed on the tire registration paper form. We note, as indicated above, that the available space on the form is limited.

Other possible options for tire registration.

We request comments on whether the regulation should specify additional options for registering tires sold by independent tire dealers that would be consistent with our statutory authority. We intend for the scope of this proposal to be broad and, depending on the comments, may adopt additional options in the final rule.

We note that, as indicated above, it is our goal to accommodate and facilitate internet and other electronic registration of tires, including voluntary registration of tires by independent dealers. We also note that since additional options would also be voluntary, there is no reason to specify ones that would be unlikely to be used by independent tire dealers, tire manufacturers, and/or consumers.

We seek comment on whether there should be some type of option in which independent tire dealers might be able to use electronic forms in lieu of paper forms to enable consumers to register their tires. Such an approach might, for example, involve independent tire dealers setting up computer terminals at their dealerships in which tire purchasers would see a form on the computer screen with the TIN and possibly other information already filled in, which tire purchasers could use to register their tires. We note that if such an approach involved the consumer's being given the electronic form with the TIN filled in, the approach could, consistent with the requirements of 49 U.S.C. 30117(b)(2)(B), be an option that independent tire dealers could use in lieu of paper forms. We also note that if such an option were permitted in lieu of paper forms instead of as a supplement, the electronic form would need to be standardized.

We specifically request that any commenters recommending additional options for tire registration, beyond

[17] 70 FR 53569, 53572–73, September 9, 2005.

those in the proposed regulatory text, provide specific recommended regulatory text for those additional options.

Registration forms.

As discussed above, for tires sold by independent tire dealers, NHTSA is required by statute to prescribe a standardized tire registration form for all tires. Specifically, 49 U.S.C. 30117(b)(2)(B) provides ''(t)he Secretary shall prescribe the form, which shall be standardized for all tires * * *''

The statute provides that tire manufacturers must give sufficient copies of the registration forms to distributors and dealers. Also, Part 574.8 permits distributors and dealers to use registration forms obtained from other sources.

Pursuant to the requirement to prescribe a standardized tire registration form, NHTSA has adopted requirements through rulemaking and placed them in Part 574. The details of some of the requirements, including size and data elements, are set in the regulatory text. The details of certain other requirements are not set out in the regulatory text. Instead, the regulatory text requires that forms conform in content and format to the forms depicted in the figures included in Part 574. See 574.7(a)(2).

To promote flexibility, we are proposing to remove the figures showing the forms in Part 574. To ensure that the forms remain standardized, we are proposing to add some requirements to the regulatory text that are currently expressed by referring to the figures, but with fewer details concerning format. We are also proposing to update the size standards to reflect the current U.S. Postal Service's ''Domestic Mail Manual'' (Updated 12–6–07) at Section 6.3 ''Cards Claimed at Card Rates'' that specifies physical standards that postcards must meet in order to be eligible for mailing at card rates.

Under our proposal, on the address side of the form, the following would continue to be required to be provided: The name and address of the manufacturer or its designee, and, in the upper right hand corner, the statement: ''Affix a postcard stamp.''

The other side of the form would continue to include the tire manufacturer's name (unless it already appears on the address side), and the statement: ''IMPORTANT, In case of a recall, we can reach you only if we have your name and address.'' There would also continue to be a statement indicating that sending in the card will add a person to the manufacturer's recall list. However, the regulation would no longer specify that the statement indicate that a person ''must'' send in the card to be on the recall list, since manufacturers may provide alternative means of registering tires.

Under our proposal, if a tire manufacturer provides a Web site where its tires can be registered, it may (but is not required to) include the following sentences: ''Instead of mailing this form, you can register online at [insert tire manufacturer's registration web site address]''.

The form would also include the admonition: ''Do it today.''

The form would also continue to include space for recording the tire identification numbers for six tires. There would also continue to be shading to distinguish between areas of the form to be filled in by sellers and customers.

As indicated above, under our proposal, the regulation would no longer specify as many details concerning the format of the form.

We request comments on the removal of these figures and on what requirements expressed by reference to the figures should be added to the regulatory text.

Registration rates.

We request comments on the current registration rates of tires sold by independent tire dealers. Commenters are asked to provide information concerning the total number of such tires that are sold and the number of those tires that are currently being registered by each alternative means, e.g., the number of tires registered by returning the paper form, the number registered using the tire manufacturer's Web site, etc. The agency requests that commenters provide the specific basis for any numbers or rates that are provided. We also request comments on how and why these registration rates may change if the agency adopts this proposed rule.

Other issues.

We request comments on other issues related to our proposal. As indicated above, we intend the scope of this proposal to be broad.

We specifically invite comments related to NHTSA's provisions for electronic registration of child safety seats in S5.8.2 of FMVSS No. 213. See final rule published in the **Federal Register** (70 FR 53569) on September 9, 2005.[18] The agency considered a number of issues related to electronic registration and electronic registration forms in that rulemaking. To what extent should the requirements we adopt related to electronic registration of tires be similar/different from the ones we adopted for child safety seats, and why?

B. Tires Sold by Dealers Controlled by Tire Manufacturers—Electronic Tire Registration

The tire registration form in Figure 4 of Part 574 is the form that is to be filled out by company-controlled tire dealers and returned to the manufacturer upon the sale of new tires. We note that we have no data on the continued use of this form, or what percentage of company-controlled dealers continue to use this form versus submit the registration information to the tire manufacturer using electronic means.

As noted above, the agency has previously provided an interpretation letter to the RMA (July 18, 2003 agency letter) stating that while company-controlled dealers are permitted to register tires electronically:

This interpretation does not relieve non-independent distributors and dealers from the requirements of section 574.8(b) that they themselves record the purchaser's name and address, the tire identification number(s) of the tire(s) sold, and a suitable identification of themselves as the selling dealer on a tire registration form and return the completed forms to the tire manufacturers or their designees. While we would interpret Part 574 to permit non-independent distributors and dealers to accomplish these tasks by electronic means, they may not transfer this responsibility to consumers.

In this NPRM, NHTSA is proposing to include a provision expressly reflecting this existing option in the Part 574 requirements. Specifically, NHTSA proposes that electronic means be permitted as an alternative to the paper registration forms specified in S574.7(b). As earlier stated, we have little information on how these systems are configured, so we are proposing simple language and we welcome comments on alternative language.

As to Part 574's requirements for these forms, requirements concerning data elements are set forth in the regulatory text, and the regulatory text also specifies that the forms must be similar in format and size to that in Figure 4. We note that the statutory requirement that NHTSA prescribe a standardized tire registration form does not apply to ones for tires sold by dealers controlled by tire manufacturers.

To promote flexibility, we are proposing to remove Figure 4 showing the registration forms to be used. We are proposing to add several requirements

[18] Docket NHTSA–2005–22324.

currently expressed by reference to the figure, and otherwise leave all other details to the tire manufacturer. Under our proposal, the form would continue to be required to include:

- A statement indicating where the form should be returned, including the name and mailing address of the manufacturer or its designee.
- The tire manufacturers' logo or other identification, if the manufacturer is not identified as part of the statement indicating where the form should be returned.
- The statement: ''IMPORTANT; FEDERAL LAW REQUIRES TIRE IDENTIFICATION NUMBERS MUST BE REGISTERED.''

We request comments on the removal of this figure and on what requirements expressed by reference to the figure should be added to the regulatory text.

VI. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. The Office of Management and Budget reviewed this rulemaking document under E.O. 12866, ''Regulatory Planning and Review.'' This rulemaking action has been determined to be significant under the DOT Policies and Procedures because of public interest.

In this document, NHTSA is proposing to amend Part 574 by permitting collection of the names and addresses of first purchasers of new tires by internet and other computerized means. Nothing in the proposed rule, if made final, would require any tire dealer to use these new procedures. All collection of the names and addresses of first purchasers of new tires may continue to be collected as at present. However, we believe that permitting electronic means of tire registration will increase the rate of registrations, which will in turn increase the effectiveness of future tire recalls and thus improve motor vehicle safety.

There would be some cost impacts, in terms of time and/or money, associated with increased registrations of tires by electronic means. Since the options we are proposing are voluntary, we do not know to what extent they will be utilized by independent tire dealers and tire manufacturers. However, we are providing analysis to show the potential cost impacts.

Increased registrations by consumers using the internet.

Under the proposed rule, tire manufacturers can provide, on a voluntary basis, internet registration information on the tire registration form that is given to purchasers by independent tire dealers. Consumers could then register their tires online instead of filling out the paper form and mailing it to the tire manufacturer or its designee. The cost of printing this information on the form is negligible, and therefore there would be no cost increase to tire manufacturers that are responsible for printing the forms and providing them to independent tire dealers. However, the tire manufacturers offering the option of internet-based tire registration on their Web sites would incur some cost to include a registration site. The agency has found that most tire manufacturers already have tire registration sites included on their Web sites. This method of registration would save consumers the cost of a postcard postage stamp, and it would save costs for tire manufacturers because they (or their designee) would not have to transcribe the information on the paper forms into a tire registration data base.

In the table which follows, we are providing estimates of the monetized costs associated with various rates of increased tire registration using the internet. Under this scenario, paper forms would continue to be provided to purchasers, but the additional registrations would occur via the internet rather than by the forms being mailed in. Therefore, although tire registrations would increase, mailing and other paperwork costs would remain the same. We are assuming, for purposes of these estimates, that the costs associated with the current level of tire registration would not change. The additional costs associated with this scenario would be the time consumers spent registering tires via the internet that they otherwise would not register. We also assume that because the tire registration information is collected using purely electronic means, there would be no additional labor burden for the tire manufacturer for recordkeeping associated with these additional registrations. To monetize the costs of consumers filling out paper forms or using the internet, a labor rate of $14.61 per hour is used.[19]

CONSUMER COST PROJECTIONS ASSOCIATED WITH INCREASED TIRE REGISTRATIONS WITH CONSUMERS REGISTERING TIRES USING THE INTERNET

	Current tire registrations	Future tire registrations using internet-based registration by consumers		
		10 percent increase	15 percent increase	20 percent increase
Consumer Hour Burden Estimates:				
Number of Consumers	10,000,000	11,000,000	11,500,000	12,000,000
Total Tire Registrations	54,000,000	59,400,000	62,100,000	64,800,000
Tire Registration Hours	225,000	247,500	258,750	270,000
Monetized Costs (Consumer time valued @ $14.61/Hour	$3,287,250	$3,615,975	$3,780,338	$3,944,700

Voluntary registration by independent tire dealers.

Under the proposed rule, independent tire dealers could voluntarily register tires for consumers, if this was authorized by the tire manufacturer. Dealers that did this would incur additional costs to upgrade their computer systems, with both initial startup costs and then costs for periodic maintenance of the systems. We assume that many independent tire dealers, especially the larger ones, already collect tire purchaser information as part of the sales process. For these manufacturers, we believe it may be possible to upgrade the sales system to include automatic electronic registration on behalf of the purchaser. We do not know the details of how this process may work, which would be up to the

[19] The median hourly rate among all occupations, May 2006, according to the Bureau of Labor Statistics; see *http://www.bls.gov/oes/current/oes_nat.htm#b00–0000.*

tire manufacturer and the independent tire dealers. The process might also include companies designated by the tire manufacturers to provide services in this area. We also do not know what actual startup and annual costs might be to independent tire dealers. However, once these systems are installed, tire registration rates would be 100 percent for tires sold through these dealers. This compares with overall current registration rates of 10 percent for tires sold through independent dealers.

The costs associated with voluntary tire registration by independent tire dealers would be offset, or partially offset, by the fact that these dealers would no longer need to provide paper forms to consumers, or fill out these forms with tire identification numbers.

The agency has estimated that there are a total of 59,000 tire dealers in the U.S., including 13,000 that are company-controlled dealers. The remaining 46,000 tire dealers include 20,000 car and truck dealers and 26,000 independent tire dealers.

There are two unknowns for estimating the cost impacts on independent tire dealers—how many independent dealers would voluntarily upgrade computer systems to register tires, and what the cost of these computer systems would be in terms of initial cost and annual maintenance. Each year, a number of independent dealers will install or upgrade computer systems, and they continue to maintain their systems in subsequent years. We will assume that an initial installation cost of providing an upgraded system is $750 and that annual maintenance thereafter is $200. We do not know whether each tire manufacturer would work directly with each independent tire dealer, or whether third party designees would provide an interface service for all tire manufacturers and independent tire dealers. We note that third party designees could provide efficiencies of having a single contact company that could be the interface for an independent tire dealer and multiple tire manufacturers.

We are providing cost estimates assuming that 30 percent of independent tire dealers would participate in such a voluntary program, with 10 percent beginning the first year (4,600 dealers), an additional 10 percent beginning the second year, and the third 10 percent beginning the third year. These costs can be summarized as follows:

Year	Startup costs for computer systems	Annual maintenance costs	Total cost
2009	$3.45 M	0	$3.45 M
2010	3.45 M	$0.92 M	4.37 M
2011	3.45 M	1.84 M	5.29 M
2012 and Beyond	0	2.76 M	2.76 M

Since the proposed rule, if made final, would establish collection of information procedures that would be used entirely at the discretion of the tire dealer, and the estimated paperwork burdens of tire dealers electing to use these procedures are not expected to exceed $100 million annually, the agency does not consider this rulemaking to be ''economically significant,'' as defined by E.O. 12866. Thus, it has not prepared a full regulatory evaluation.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR part 121 define a small business, in part, as a business entity ''which operates primarily within the United States.'' (13 CFR § 121.105(a)). No regulatory flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act. As explained above, NHTSA is proposing to amend Part 574 by permitting collection of the names and addresses of first purchasers of new tires by internet and other computerized means. Electronic collection would be permitted in place of paper forms. This regulatory flexibility analysis does not apply to manufacturer-owned tire dealers, because they are not considered small businesses under SBA's affiliation rule at 5 CFR section 121.103(a)(1) which states in part: ''Concerns and entities are affiliates of each other when one controls or has the power to control the other * * *'' The tire manufacturer either ''controls or has the power to control'' dealerships that it owns.

Under SBA's size standard regulations (at 5 CFR Part 121), ''tire dealers'' are classified under North American Industry Classification System (NAICS) Code 441320 with a size standard of average yearly sales of $6 million. ''New car dealers'' are classified under NAICS Code 441110 with a size standard of average yearly sales of $24.5 million. ''Used car dealers'' are classified under NAICS Code 441120 with a size standard of average yearly sales of $19.5 million.

In its February 27, 2006 comments to NHTSA, NADA stated that of its ''20,000 franchised automobile and truck dealers who sell new and used motor vehicles,'' a ''significant number are small businesses as defined by the SBA.'' NADA did not specify the number that would be considered ''small businesses.'' In the **Federal Register** of March 21, 2007 (54 FR 133440), we estimated the number of independent tire dealers to be 26,000. Assuming all NADA members are small businesses, the total number of independent tire dealers that are small businesses would be 46,000.

I hereby certify that if made final, this proposed rule would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification is that if made final, this proposed rule would not substantively change existing 49 CFR Part 574 requirements for small businesses that are independent tire dealers. The electronic collection of information procedures would be voluntary for independent tire dealers. The statement on the paper form giving

Web site information about online registration of new tires (and the paper form itself) would be provided by the tire manufacturer. If it chooses not to adopt electronic tire registration procedures, the responsibilities of the independent dealer would remain the same, to pass out the paper forms to first purchasers of new tires.

C. National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

D. Executive Order 13132 (Federalism)

NHTSA has examined today's proposal pursuant to Executive Order 13132 (64 FR 43255, August 10, 1999) and concluded that no additional consultation with States, local governments or their representatives is mandated beyond the rulemaking process. The agency has concluded that the proposal does not have federalism implications because, if made final, the rule would 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.''

If the proposed rule is made final, a State requirement would be preempted if it conflicted with the rule.

E. Civil Justice Reform

With respect to the review of the promulgation of a new regulation, section 3(b) of Executive Order 12988, ''Civil Justice Reform'' (61 FR 4729, February 7, 1996) requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect; (2) clearly specifies the effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) clearly specifies the retroactive effect, if any; (5) adequately defines key terms; and (7) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. This document is consistent with that requirement.

Pursuant to this Order, NHTSA notes as follows. The preemptive effect of this proposed rule is discussed above. NHTSA notes further that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceeding before they may file suit in court.

F. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid Office of Management and Budget (OMB) control number. The proposed changes to the tire registration and recordkeeping rule, if made final, would be ''collections of information,'' as that term is defined by OMB at 5 CFR 1320. Before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulations (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected; and

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

In compliance with the requirements of 5 CFR part 1320, NHTSA requests comment on the collection of information that would be revised if this NPRM were made final.

Title: 49 CFR part 574, Tire Identification and Recordkeeping.

OMB Control Number: 2127–0050.

Requested Expiration Date of Approval: Three years from date of last approval.

Type of Request: Extension of a currently approved collection, with changes.

Summary of the Collection of Information: 49 U.S.C. 30117(b) requires each tire manufacturer to collect and maintain records of the first purchasers of new tires. To carry out this mandate, 49 CFR part 574 requires tire dealers and distributors owned or controlled by a tire manufacturer to record the names and addresses of retail purchasers of new tires and the identification number(s) of the tires sold. A specific form is provided to tire dealers and distributors by tire manufacturers for recording this information. The completed forms are returned to the tire manufacturers where they are retained for not less than five years. Part 574 requires independent tire dealers and distributors to provide a registration form to consumers with the tire identification number already recorded and information identifying the dealer/distributor. The consumer can then record his/her name and address and return the form to the tire manufacturer. These forms are also provided to tire dealers and distributors by tire manufacturers. Additionally, motor vehicle manufacturers are required to record the names and addresses of the first purchasers (for purposes other than resale), together with the identification numbers of the tires on the new vehicles, and retain this information for not less than five years.

Description of the Need for the Information and the Proposed Use of the Information: The information is used by a tire manufacturer after it or the agency determines that some of its tires either fail to comply with an applicable safety standard or contain a safety related defect. With the information, the tire manufacturer can notify the first purchaser of the tires and provide them with any necessary information or instructions or remedy.

Without this information, efforts to identify the first purchaser of tires that have been determined to be defective or nonconforming pursuant to Sections 30118 and 30119 of Title 49 U.S.C. would be impeded. Further, the ability of the purchasers to take appropriate action in the interest of motor vehicle safety may be compromised.

Description of the Likely Respondents (Including Estimated Number and Proposed Frequency of Response to the Collection of Information):

March 21, 2007 Federal Register Notice—In the 30-day notice announcing NHTSA's request for an extension to collect the tire registration and recordkeeping information had been forwarded to OMB, we estimated that the collection of information affects 10 million respondents annually. This group consists of approximately 20 tire manufacturers, 59,000 new tire dealers and distributors, and 10 million consumers who choose to register their tire purchases with tire manufacturers. A response is required by motor vehicle manufacturers upon each sale of a new

vehicle and by non-independent tire dealers with each sale of a new tire. A consumer may elect to respond when purchasing a new tire from an independent dealer.

Today's Estimate Resulting From the Proposed Collection of Information Including Electronic Reporting—If made final, today's NPRM would affect the tire registration and recordkeeping collection of information as follows: The publication ''Modern Tire Dealer'' reports that the tire industry's annual unit sales of new tires in the United States for the past three years were as follows: 2004—319 million; 2005—326 million; 2006—313 million. Thus, over the past three years, the average sales of tires per year in the U.S. were roughly 320 million.

Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting from the Collection of Information:

March 21, 2007 Federal Register Notice—In the March 21, 2007 notice, we provided the following estimated burden:

New tire dealers and distributors	59,000.
Consumers	10,000,000.
Total tire registrations (manually)	54,000,000.
Total tire registration hours (manually)	225,000 hours.
Recordkeeping hours (manually)	25,000 hours.
Total annual tire registration and recordkeeping hours	250,000 hours.

We note that with today's proposed rule, tire registration by purchasers would be facilitated by accommodating electronic means. We believe that if electronic registration were accommodated, the response rate for purchasers may increase. Moreover, some independent tire dealers may voluntarily register tires for consumers, thereby resulting in a higher registration rate.

Given that the various options we are proposing would be voluntary, we do not know to what extent they would be utilized by independent tire dealers, tire manufacturers and consumers. Therefore, based on the information that is available, these are our estimates of burden.

The same information (name and address of the purchaser) would be collected regardless of the format, paper form, or typing in information on a company Web site. Because some people type faster and some people write faster, NHTSA believes that the amount of time it will take to provide information about the name and address of the purchaser would be very roughly the same, regardless of the format. To the extent more consumers registered their tires, actual burdens realized could thus increase concomitantly with the higher registration rates. On the other hand, it may be possible for tire manufacturers and independent tire dealers to develop electronic systems, tied in with the systems used for monitoring inventory and recording sales information, that could automatically register the tires with the tire manufacturer at little additional cost.

NHTSA believes that virtually all recordkeeping by tire manufacturers is already done electronically. NHTSA estimates that it takes roughly 25,000 hours to transfer handwritten data to an electronic format for storage. Because, with Web site-based information, there would be no change in format (i.e., going from electronic reporting to electronic storage), NHTSA believes there would be virtually no burden hours imposed in transferring information provided on a tire manufacturer's Web site to a recordkeeping site. For these reasons, NHTSA believes the recordkeeping burden hours would remain at 25,000 hours.

NHTSA solicits comments on the proposed changes in the collection of information associated with part 574 and on NHTSA's analysis of how the changes will affect the number of burden hours affecting the public. Comments must refer to the docket and notice numbers cited at the beginning of this NPRM and be submitted to: Docket Operations, M–30, U.S. Department of Transportation, West Building, Ground Floor, Rm. W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272) directs NHTSA to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers (SAE). The NTTAA directs the agency to provide Congress, through the OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

After carefully reviewing the available information, NHTSA has determined that there are no voluntary consensus standards relevant to this rulemaking, as the information to be collected and sent to tire manufacturers is needed only in the event of a tire recall. Accordingly, this proposed rule is in compliance with Section 12(d) of NTTAA.

H. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year (adjusted for inflation with base year of 1995). Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires NHTSA 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 NHTSA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the agency publishes with the final rule an explanation why that alternative was not adopted.

This proposed rule would not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of more than $100 million annually. Accordingly, the agency has not prepared an Unfunded Mandates assessment.

I. Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles

of plain language includes consideration of the following questions:

—Have we organized the material to suit the public's needs?
—Are the requirements in the rule clearly stated?
—Does the rule contain technical language or jargon that is not clear?
—Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
—Would more (but shorter) sections be better?
—Could we improve clarity by adding tables, lists, or diagrams?
—What else could we do to make this rulemaking easier to understand?

If you have any responses to these questions, please include them in your comments on this NPRM.

J. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

K. Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477 at 19478) or you may visit *http://docketsinfo.dot.gov/*.

V. Public Participation

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments. Your comments must not be more than 15 pages long.[20] We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit your comments by any of the following methods:

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

If you are submitting comments electronically as a PDF (Adobe) file, we ask that the documents submitted be scanned using Optical Character Recognition (OCR) process, thus allowing the agency to search and copy certain portions of your submissions.[21]

Please note that pursuant to the Data Quality Act, in order for substantive data to be relied upon and used by the agency, it must meet the information quality standards set forth in the OMB and DOT Data Quality Act guidelines. Accordingly, we encourage you to consult the guidelines in preparing your comments. OMB's guidelines may be accessed at *http://www.whitehouse.gov/omb/fedreg/reproducible.html.* DOT's guidelines may be accessed at *http://dmses.dot.gov/submit/DataQualityGuidelines.pdf.*

How Can I Be Sure That My Comments Were Received?

If you submit your comments by mail and wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation.[22]

In addition, you should submit a copy, from which you have deleted the claimed confidential business information, to the Docket by one of the methods set forth above.

Will the Agency Consider Late Comments?

We will consider all comments received before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments received after that date. Therefore, if interested persons believe that any new information the agency places in the docket affects their comments, they may submit comments after the closing date concerning how the agency should consider that information for the final rule.

If a comment is received too late for us to consider in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted By Other People?

You may read the materials placed in the docket for this document (e.g., the comments submitted in response to this document by other interested persons) at any time by going to *http://www.regulations.gov.* Follow the online instructions for accessing the dockets. You may also read the materials at the Docket Management Facility by going to the street address given above under **ADDRESSES**. The Docket Management Facility is open between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays.

List of Subjects in 49 CFR Part 574

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

In consideration of the foregoing, NHTSA proposes to amend 49 CFR part 574 as follows:

PART 574—TIRE IDENTIFICATION AND RECORDKEEPING

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

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

2. Section 574.7 is amended by revising paragraphs (a)(2) and (a)(3) and adding new paragraphs (e) and (f) to read as follows:

[20] *See* 49 CFR § 553.21.

[21] Optical character recognition (OCR) is the process of converting an image of text, such as a scanned paper document or electronic fax file, into computer-editable text.

[22] *See* 49 CFR 512.

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

(a)(1) * * *

(2) Each tire registration form provided to independent distributors and dealers pursuant to paragraph (a)(1) of this section shall contain space for recording the information specified in paragraphs (a)(4)(i) through (a)(4)(iii) of this section. Each form shall:

(i) Have the following physical characteristics:

(A) Be rectangular;

(B) Be not less than 3½ inches high, 5 inches long, and 0.007 inches thick;

(C) Be not more than 4¼ inches high, or more than 6 inches long, or greater than 0.016 inch thick.

(ii) On the address side of the form, be addressed with the name and address of the manufacturer or its designee, and include, in the upper right hand corner, the statement ''Affix a postcard stamp.''

(iii) On the other side of the form:

(A) Include the tire manufacturer's name, unless it appears on the address side of the form;

(B) Include a statement explaining the purpose of the form and how a consumer may register tires. The statement shall:

(*1*) Include the heading ''IMPORTANT''.

(*2*) Include the sentence: ''In case of a recall, we can reach you only if we have your name and address.''

(*3*) Indicate that sending in the card will add a person to the manufacturer's recall list.

(*4*) If a tire manufacturer provides a Web site where its tires can be registered, it may (but is not required to) include the following sentence: ''Instead of mailing this form, you can register online at [insert tire manufacturer's registration Web site address].''

(*5*) Include the sentence: ''Do it today.''

(C) Include space for recording tire identification numbers for six tires.

(D) Use shading to distinguish between areas of the form to be filled in by sellers and customers.

(*1*) Include the statement: ''Shaded areas must be filled in by seller.''

(*2*) The areas of the form for recording tire identification numbers and information about the seller of the tires must be shaded.

(*3*) The area of the form for recording the customer name and address must not be shaded.

(D) Include, in the top right corner, the phrase ''OMB Control No. 2127–0050''.

(3) Each tire registration form provided to distributors and dealers that are not independent distributors or dealers pursuant to paragraph (a)(1) of this section must contain space for recording the information specified in paragraphs (a)(4)(i) through (a)(4)(iii) of this section. Each form must include:

(A) A statement indicating where the form should be returned, including the name and mailing address of the manufacturer or its designee.

(B) The tire manufacturers' logo or other identification, if the manufacturer is not identified as part of the statement indicating where the form should be returned.

(C) The statement: ''IMPORTANT: FEDERAL LAW REQUIRES TIRE IDENTIFICATION NUMBERS MUST BE REGISTERED''.

(D) In the top right corner, the phrase ''OMB Control No. 2127–0050''.

* * * * *

(e) Tire manufacturers may voluntarily provide means for tire registration via the internet, by telephone or other electronic means.

(f) Each tire manufacturer shall meet the requirements of paragraphs (b), (c) and (d) of this section with respect to tire registration information submitted to it or its designee by any means authorized by the manufacturer in addition to the use of registration forms.

3. Section 574.8 is revised to read as follows:

§ 574.8 Information requirements—tire distributors and dealers.

(a) *Independent distributors and dealers.*

(1) Each independent distributor and each independent dealer selling or leasing new tires to tire purchasers or lessors (hereinafter referred to in this section as ''tire purchasers'') shall comply with paragraph (a)(1)(i), (a)(1)(ii) or (a)(1)(iii) of this section:

(i) At the time of sale or lease of the tire, provide each tire purchaser with a paper tire registration form on which the distributor or dealer has recorded the following information:

(A) The entire tire identification number of the tire(s) sold or leased to the tire purchaser, and

(B) The distributor's or dealer's name and street address. In lieu of the street address, and if one is available, the distributor or dealer's e-mail address or Web site may be recorded. Other means of identifying the distributor or dealer known to the manufacturer may also be used.

(ii) Record the following information on a paper tire registration form and return it to the tire manufacturer, or its designee, on behalf of the tire purchaser, at no charge to the tire purchaser and within 30 days of the date of sale or lease:

(A) The purchaser's name and address,

(B) The entire tire identification number of the tire(s) sold or leased to the tire purchaser, and

(C) The distributor's or dealer's name and street address. In lieu of the street address, and if one is available, the distributor or dealer's e-mail address or Web site may be recorded. Other means of identifying the distributor or dealer known to the manufacturer may also be used.

(iii) If authorized by the tire manufacturer, electronically transmit the following information on the tire registration form to the tire manufacturer, or its designee, using secure means (e.g., https on the web), at no charge to the tire purchaser and within 30 days of the date of sale or lease:

(A) The purchaser's name and address,

(B) The entire tire identification number of the tire(s) sold or leased to the tire purchaser, and

(C) The distributor's or dealer's name and street address. In lieu of the street address, and if one is available, the distributor or dealer's e-mail address or Web site may be recorded. Other means of identifying the distributor or dealer known to the manufacturer may also be used.

(2) Each independent distributor or dealer that complies with paragraph (a)(1)(i) or (ii) of this section shall use either the tire registration forms provided by the tire manufacturers pursuant to § 574.7(a) or registration forms obtained from another source. Paper forms obtained from other sources must comply with the requirements specified in § 574.7(a) for forms provided by tire manufacturers to independent distributors and dealers.

(3) Multiple tire sales or leases by the same tire purchaser may be recorded on a single paper registration form or in a single Web site transaction.

(4) Each independent distributor or dealer that is complying with paragraph (a)(1)(iii) with respect to a sale or lease shall include a statement to that effect on the invoice for that sale or lease and provide the invoice to the tire purchaser.

(b) *Other distributors and dealers.*

(1) Each distributor and each dealer, other than an independent distributor or dealer, selling new tires to tire purchasers:

(i) shall submit, using paper registration forms or, if authorized by the tire manufacturer, secure electronic means, the information specified in § 574.7(a)(4) to the manufacturer of the

tires sold, or to the manufacturer's designee.

(ii) shall submit the information specified in § 574.7(a)(4) to the tire manufacturer or the manufacturer's designee, not less often than every 30 days. A distributor or dealer selling fewer than 40 tires of all makes, types and sizes during a 30 day period may wait until a total of 40 new tires is sold. In no event may more than six months elapse before the § 574.7(a)(4) information is forwarded to the respective tire manufacturers or their designees.

(c) Each distributor and each dealer selling new tires to other tire distributors or dealers shall supply to the distributor or dealer a means to record the information specified in § 574.7(a)(4), unless such means has been provided to that distributor or dealer by another person or by a manufacturer.

(d) Each distributor and each dealer shall immediately stop selling any group of tires when so directed by a notification issued pursuant to 49 U.S.C. Section 30118,

Notification of defects and noncompliance.

4. In Part 574, Figures 3a, 3b and 4 are removed.

Issued on: January 16, 2008.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. E8–1099 Filed 1–23–08; 8:45 am]

BILLING CODE 4910–59–P

Notices

Federal Register

Vol. 73, No. 16

Thursday, January 24, 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

Commodity Credit Corporation

Notice of Funds Availability: Inviting Applications for the Emerging Markets Program

Announcement Type: New.

(Catalog of Federal Domestic Assistance (CFDA) Number: 10.603.)

SUMMARY: The Commodity Credit Corporation (CCC) announces the availability of funding for the Emerging Markets Program (EMP) for fiscal year (FY) 2008. The intended effect of this notice is to solicit applications from the private sector and from government agencies for FY 2008 and award funds in early 2008. The EMP is administered by personnel of the Foreign Agricultural Service (FAS).

DATES: All proposals must be received by 5 p.m. Eastern Standard Time February 25, 2008. Applications received after this time will not be considered.

Note: Another notice regarding the availability of FY 2009 EMP funds will be published later this year.

FOR FURTHER INFORMATION CONTACT: Entities wishing to apply for funding should contact the Grants Management Branch, Foreign Agricultural Service, Portals Office Building, Suite 400, 1250 Maryland Avenue, SW., Washington, DC 20024, phone: (202) 720–5306, fax: (202) 690–0193, e-mail: *emo@fas.usda.gov.* Information is also available on the Foreign Agricultural Service Web site at *http://www.fas.usda.gov/mos/em-markets/em-markets.asp.*

SUPPLEMENTARY INFORMATION:

I. Funding Opportunity Description

Authority: The EMP is authorized by section 1542(d)(1) of the Food, Agriculture, Conservation and Trade Act of 1990 (The Act), as amended. The EMP regulations appear at 7 CFR part 1486.

1. *Purpose:* The EMP assists U.S. entities in developing, maintaining, or expanding exports of U.S. agricultural commodities and products by funding technical assistance activities that promote U.S. products in emerging foreign markets. The Program is intended primarily to support export market development efforts of the private sector, but program resources may also be used to assist public organizations.

All U.S. agricultural commodities and products, except tobacco, are eligible for consideration. Agricultural product(s) should be comprised of at least 50 percent U.S. origin content by weight, exclusive of added water, to be eligible for funding. Proposals which seek support for multiple commodities are also eligible. EMP funding may only be used to support exports of U.S. agricultural commodities and products through generic activities.

2. *Appropriate Activities:* Following are the types of project activities that may be considered for funding under the EMP:

—Projects designed specifically to improve market access in emerging foreign markets. Example: Activities intended to mitigate the impact of political or economic events in order to maintain U.S. market share;
—Marketing and distribution of value-added products. Examples: Market research on the potential for consumer-ready foods; new uses of a product;
—Studies of food distribution channels in emerging markets, including infrastructural impediments to U.S. exports. Examples: Grain storage handling and inventory systems; distribution infrastructure development;
—Projects that specifically address various constraints to U.S. exports, including sanitary and phytosanitary issues and other non-tariff barriers. Examples: Seminars on U.S. food safety standards and regulations; assessing and addressing pest and disease problems that inhibit U.S. exports;
—Assessments and follow up activities designed to improve country-wide food and business systems, and to determine potential use of general export credit guarantees. Example: Product needs assessments and market analysis;
—Projects that help foreign governments collect and use market information and develop free trade policies that benefit U.S. exporters as well as the target country or countries. Examples: Agricultural statistical analysis; development of market information systems; and
—Short-term training in broad aspects of agriculture and agribusiness trade that will benefit U.S. exporters. Examples: Retail training; transportation and distribution seminars.

EMP funds may not be used to support normal operating costs of individual organizations, nor as a source to recover pre-award costs or prior expenses from previous or ongoing projects. Proposals that counter national strategies or duplicate activities planned or already underway by U.S. non-profit agricultural commodity or trade associations (''cooperator'') organizations will not be considered. Ineligible expenditures include branded product promotions (in-store, restaurant advertising, labeling, etc.); advertising; administrative and operational expenses for trade shows; Web site development; equipment purchases; and the preparation and printing of brochures, flyers, posters (except in connection with specific technical assistance activities such as training seminars). For a more complete description of ineligible activities, please refer to the EMP Regulations.

3. *Eligible Markets:* The Act defines an emerging market as any country that the Secretary of Agriculture determines:

(a) Is taking steps toward developing a market-oriented economy through the food, agriculture, or rural business sectors of the economy of the country; and

(b) Has the potential to provide a viable and significant market for United States agricultural commodities or products of United States agricultural commodities.

Because EMP funds are limited and the range of potential emerging market countries is worldwide, consideration will be given to proposals that target countries or regional groups with per capita income of less than $11,115 (the current ceiling on upper middle income economies as determined by the World Bank [World Development Indicators;

July 2007, *http://siteresources.worldbank.org/DATASTATISTICS/Resources/CLASS.XLS*]) and populations of greater than 1 million.

Income limits and their calculation can change from year to year with the result that a given country may qualify under the legislative and administrative criteria one year but not the next. Therefore, CCC has not established a fixed list of ''emerging market'' countries.

A few countries technically qualify as emerging markets but may require a separate determination before funding can be considered because of political sensitivities.

II. Award Information

In general, all qualified proposals received before the application deadline will compete for EMP funding. Priority consideration will be given to proposals that identify and seek to address specific problems or constraints to agricultural exports in emerging markets through technical assistance activities that are intended to expand or maintain U.S. agricultural exports. The applicants' willingness to contribute resources, including cash, goods and services will be a critical factor in determining which proposals are funded under the EMP. Proposals will also be judged on the potential benefits to the industry represented by the applicant and the degree to which the proposal demonstrates industry support.

The limited funds and the range of eligible emerging markets worldwide generally preclude CCC from approving large budgets for individual projects. While there is no minimum or maximum amount set for EMP-funded projects, most projects are funded at a level of less than $500,000 and for a duration of approximately one year. Private entities may submit multi-year proposals requesting higher levels of funding that may be considered in the context of a detailed strategic implementation plan. Funding in such cases is normally provided one year at a time with commitments beyond the first year subject to interim evaluations and funding availability. Government entities are not eligible for multi-year funding.

Funding for successful proposals will be provided through specific agreements. The CCC, through FAS, will be kept informed of the implementation of approved projects through the requirement to provide regular progress reports and final performance reports. Changes in the original project timelines and adjustments within project budgets must be approved by FAS. EMP funds awarded to federal government agencies must be expended or otherwise obligated by COB September 30, 2008.

III. Eligibility and Qualification Information

1. Eligible Applicants. Any United States private or government entity with a demonstrated role or interest in exports of U.S. agricultural commodities or products may apply to the program. Government entities consist of Federal, State, and local agencies. Private entities include non-profit trade associations, universities, agricultural cooperatives, state regional trade groups, and profit-making entities and consulting businesses. Proposals from research and consulting organizations will be considered if they provide evidence of substantial participation and financial support from the U.S. industry. For-profit entities are also eligible but may not use program funds to conduct private business, promote private self-interests, supplement the costs of normal sales activities, or promote their own products or services beyond specific uses approved by CCC in a given project.

U.S. market development cooperators and state regional trade groups (SRTGs) may seek funding to address priority, market specific issues and to undertake activities not suitable for funding under other marketing programs, e.g., the Foreign Market Development (Cooperator) Program and the Market Access Program (MAP). Foreign organizations, whether government or private, may participate as third parties in activities carried out by U.S. organizations, but are not eligible for funding assistance from the program.

2. Cost Sharing. No private sector proposal will be considered without the element of cost-share from the applicant and/or U.S. partners. The EMP is intended to complement, not supplant, the efforts of the U.S. private sector. There is no minimum or maximum amount of cost share, though the range in recent successful proposals has been between 35 and 75 percent. The degree of commitment to a proposed project, represented by the amount and type of private funding, is used in determining which proposals will be approved for funding. Cost-share may be actual cash invested or professional time of staff assigned to the project. Proposals for which private industry is willing to commit cash, rather than in-kind contributions such as staff resources, will be given priority consideration.

Cost-sharing is not required for proposals from U.S. federal, state or local government agencies, but is mandatory for all other eligible entities, even when they may be party to a joint proposal with a U.S. government agency. Contributions from USDA or other U.S. government agencies or programs may not be counted toward the stated cost share requirement. Similarly, contributions from foreign (non-U.S.) organizations may not be counted toward the cost share requirement, but may be counted in the total cost of the project.

3. *Other.* Proposals should include a justification for funding assistance from the program—an explanation as to what specifically could not be accomplished without federal funding assistance and why the participating organization(s) would be unlikely to carry out the project without such assistance. Applicants may submit more than one proposal.

IV. Application and Submission Information

1. *Address To Request Package.* EMP applicants may use the Unified Export Strategy (UES) application process, an online system which allows interested applicants to submit a consolidated and strategically coordinated single proposal that incorporates funding requests for any or all of the market development programs administered by FAS.

Applicants are not required to use the UES, but are strongly encouraged to do so because it reduces paperwork and expedites the FAS processing and review cycle. Applicants planning to use the online UES system must contact the Program Policy Staff at (202) 720–4327 to obtain site access information including a user id and password. The Internet-based application, including step-by-step instructions for its use, is located at the following URL address: *http://www.fas.usda.gov/cooperators.html.* A Help file is available to assist applicants with the process. Applicants using the online system should also provide, promptly after the deadline for submitting the online application, a printed or e-mailed version of each proposal (using Word or compatible format) to one of the following addresses:

Hand Delivery (including FedEx, DHL, UPS, etc.): U.S. Department of Agriculture, Foreign Agricultural Service, Grants Management Branch, Portals Office Building, Suite 400, 1250 Maryland Avenue, SW., Washington, DC 20024.

U.S. Postal Delivery: U.S. Department of Agriculture, Foreign Agricultural Service, Grants Management Branch, STOP 1042, 1400 Independence Ave., SW., Washington, DC 20250–1042.

Applicants electing not to use the online system must submit both (1) a

printed copy of their application to the addresses above and (2) an electronic version to the e-mail address above.

2. *Content and Form of Application Submission.* It is highly recommenced that any organization considering applying to the program first obtain a copy of the EMP Regulations. The regulations contain information on requirements that a proposal meet to be considered for funding under the program, along with other important information. EMP regulations and additional information are available at the following URL address: *http://www.fas.usda.gov/mos/em-markets/em-markets.asp.*

In addition, in accordance with the Office of Management and Budget's policy directive regarding the use of a universal identifier for all Federal grants or cooperative agreements, all applicants must submit a Dun and Bradstreet Data Universal Numbering System (DUNS) number prior to submitting applications. An applicant may request a DUNS number at no cost by calling the dedicated toll-free DUNS number request line on 1–866–705–5711.

Applications should be no longer than ten (10) pages and include the following information:

(a) Date of proposal;

(b) Name of organization submitting proposal;

(c) Organization address, telephone and fax numbers;

(d) Tax ID number;

(e) DUNS number;

(f) Primary contact person;

(g) Full title of proposal;

(h) Target market(s);

(i) Current conditions in the target market(s) affecting the intended commodity or product;

(j) Description of problem(s), i.e., constraint(s), to be addressed by the project, such as inadequate knowledge of the market, insufficient trade contacts, lack of awareness by foreign officials of U.S. products and business practices, impediments (infrastructure, financing, regulatory or other non-tariff barriers), etc.;

(k) Project objectives;

(l) Performance measures: benchmarks for quantifying progress in meeting the objectives;

(m) Rationale: Explanation of the underlying reasons for the project proposal and its approach, the anticipated benefits, and any additional pertinent analysis;

(n) Clear demonstration that successful implementation will benefit a particular industry as a whole, not just the applicant(s);

(o) Explanation as to what specifically could not be accomplished without federal funding assistance and why the participating organization(s) would be unlikely to carry out the project without such assistance;

(p) Specific description of activity/activities to be undertaken;

(q) Timeline(s) for implementation of activity, including start and end dates;

(r) Information on whether similar activities are or have previously been funded with USDA sources in target country/countries (e.g., under MAP and/or FMD programs); and

(s) Detailed line item activity budget. Cost items should be allocated separately to each participating organization. Expense items constituting a proposed activity's overall budget (e.g., salaries, travel expenses, consultant fees, administrative costs, etc.), with a line item cost for each, should be listed, clearly indicating:

(1) Which items are to be covered by EMP funding;

(2) Which by the participating U.S. organization(s); and

(3) Which by foreign third parties (if applicable).

Cost items for individual consultant fees should show calculation of daily rate and number of days. Cost items for travel expenses should show number of trips, destinations, cost, and objective for each trip. Qualifications of applicant(s) should be included as an attachment.

3. *Submission Dates and Times.* All proposals must be received by 5 p.m. Eastern Standard Time on [insert date 30 days after day of publication], in the Grants Management Branch, either electronically, hand delivered, or by mail. Proposals received after this date and time will not be reviewed or considered for program funding.

4. *Funding Restrictions.* Certain types of expenses are not eligible for reimbursement by the program, and there are limits on other categories of expenses such as indirect overhead charges, travel expenses and consulting fees. CCC will not reimburse unreasonable expenditures or expenditures made prior to approval of a proposal. Full details of the funding restrictions are available in the EMP regulations.

V. Application Review Information

1. *Criteria.* Key criteria used in judging proposals include:

—Appropriateness of the activities for the targeted market(s) and the extent to which the project identifies market barriers, e.g., a fundamental deficiency in the market, and/or a recent change in market conditions;

—Potential of the project to expand U.S. market share, increase U.S. exports or sales, and/or improve awareness of U.S. agricultural commodities and products;

—Quality of the project's performance measures and the degree to which they relate to the objectives, deliverables, and proposed approach and activities;

—Justification for federal funding;

—Overall cost of the project and the amount of funding provided by the applicant and any partners; and

—Evidence that the organization has the knowledge, expertise, ability, and resources to successfully implement the project.

Additional evaluation criteria are discussed in the EMP regulations.

2. *Review and Selection Process.* All applications undergo a multi-phase review within FAS, including appropriate FAS overseas offices, and by the private sector Advisory Committee on Emerging Markets to determine the qualifications, quality and appropriateness of projects, and reasonableness of project budgets.

3. *Anticipated Announcement Date.* EMP funding decisions will be announced in the spring of 2008.

VI. Award Administration Information

1. *Award Notices.* FAS will notify each applicant in writing of the final disposition of its application. FAS will send an approval letter and project agreement to each approved applicant. The approval letter and agreement will specify the terms and conditions applicable to the project, including the level of EMP funding and cost-share contribution requirements.

2. *Administrative and National Policy Requirements.* Interested parties should review the EMP regulations which are available at the following URL address: *http://www.fas.usda/mos/em-markets/em-markets.asp.*

3. *Reporting.* Quarterly progress reports for all programs one year or longer in duration are required. Projects of less than one year generally require a mid-term progress report. Final performance reports are due 90 days after completion of each project. Content requirements for both types of reports are contained in the Project Agreement. Final financial reports are also due 90 days after completion of each project as attachments to the final performance report.

VII. Agency Contact(s)

For additional information and assistance, contact the Grants Management Branch, Foreign Agricultural Service, U.S. Department of Agricultural, Portals Office Building, Suite 400, Stop 1042, 1250 Maryland

Avenue, SW., Washington, DC 20024, phone: (202) 720–5306, fax: (202) 690–0193, e-mail: *emo@fas.usda.gov*.

Signed at Washington, DC, on January 17, 2008.

W. Kirk Miller,

Acting Administrator, Foreign Agricultural Service and Vice President, Commodity Credit Corporation.

[FR Doc. 08–238 Filed 1–23–08; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Forest Service

Wasatch-Cache National Forest, UT; West Bear Landscape Management Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare a supplemental environmental impact statement to the West Bear Vegetation Management Project.

SUMMARY: The USDA Forest Service announces its intent to prepare a Supplemental Environmental Impact Statement (SEIS) to the West Bear Vegetation Management Project Final Environment Impact Statement (FEIS). The West Bear Vegetation Management Project FEIS evaluated three alternatives using timber harvest and prescribed fire as management tools to treat vegetation. The treatment is intended to move the West Bear landscape towards properly functioning condition (PFC).

DATES: Scoping will not be conducted in accordance with 40 CFR 1502.9(c)(4). The draft supplemental environmental impact statement is expected in February 2008 and the final supplemental environmental impact statement and a new Record of Decision are expected in April 2008.

ADDRESSES: Send written comments to Steve Ryberg, Evanston District Ranger, Wasatch-Cache National Forest, P.O. Box 1880, Evanston, Wyoming 82931.

FOR FURTHER INFORMATION CONTACT: Steve Ryberg, Evanston District Ranger, Evanston Ranger District, Evanston, Wyoming, (307) 789–3194.

SUPPLEMENTARY INFORMATION:

Proposed Action

On March 5, 2007, Forest Supervisor Faye Krueger made a decision to implement the West Bear Vegetation Treatment Project to treat approximately 1,686 acres. The project consists of harvesting 1,489 acres, prescribed burning 523 acres of aspen and mixed aspen/conifer, construction of 7.8 miles of temporary roads, 0.9 miles of intermittent service roads and minor reconstruction of 0.6 miles of existing service roads. The Record of Decision was appealed by two parties. On May 25, 2007, upon review, Forest Supervisor Krueger withdrew her March 5, 2007 decision. Her decision to withdraw was based on an error identified in the FEIS by an appellant and her finding that further environmental analysis was needed in regard to some species of the wildlife. The SEIS will be limited in its scope and focus on correction of the soils disclosure in FEIS, and additional effects disclosure for some species of wildlife. Clarification of goshawk territories will also be addressed.

Responsible Official

Brian Ferebee, Acting Forest Supervisor, Uinta-Wasatch-Cache National Forest 8236 Bennett Federal Building, 125 South State Street, Salt Lake City, UT 84138.

Dated: January 16, 2008.

David R. Myers,

Deputy Forest Supervisor.

[FR Doc. 08–257 Filed 1–23–08; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–822]

Helical Spring Lock Washers From the People's Republic of China: Final Results of Antidumping Duty Administrative Review

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

SUMMARY: The Department of Commerce (''the Department'') is conducting an administrative review of the antidumping duty order on helical spring lock washers (''HSLWs'') from the People's Republic of China (''PRC'') covering the period October 1, 2005, through September 30, 2006. We invited interested parties to comment on our preliminary results. Based on our analysis of the comments received, we have made changes to our margin calculations. Therefore, the final results differ from the preliminary results.

EFFECTIVE DATE: January 24, 2008.

FOR FURTHER INFORMATION CONTACT: Marin Weaver or Charles Riggle, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–2336 or (202) 482–0650, respectively.

Background

On September 12, 2007, the Department of Commerce (''the Department'') published *Certain Helical Spring Lock Washers From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review,* 72 FR 52073 (''*Preliminary Results*''). The respondent in this case is Hangzhou Spring Washer Co., Ltd. (also known as Zhejiang Wanxin Group, Ltd.) (''HSW''). Shakeproof Assembly Components Division of Illinois Tool Works, Inc. (''Shakeproof''), the U.S. interested party, filed surrogate value information and data on April 19, 2007, August 3, 2007, and October 12, 2007. HSW filed surrogate value information and data on April 19, 2007, May 29, 2007, and July 24, 2007. We gave interested parties an opportunity to comment on the *Preliminary Results*. Shakeproof requested a one-month extension of the deadline for filing case and rebuttal briefs on September 28, 2007. On October 2, 2007, we granted a one-day extension of the deadline for filing case and rebuttal briefs. On October 16, 2007, HSW filed its case brief. Shakeproof submitted the final proprietary version of its brief on October 17, 2007. HSW submitted the final proprietary version of its rebuttal brief on October 23, 2007. Shakeproof did not submit a rebuttal brief.

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

Scope of the Order

The products covered by the order are HSLWs of carbon steel, of carbon alloy steel, or of stainless steel, heat-treated or non-heat-treated, plated or non-plated, with ends that are off-line. HSLWs are designed to: (1) Function as a spring to compensate for developed looseness between the component parts of a fastened assembly; (2) distribute the load over a larger area for screws or bolts; and (3) provide a hardened bearing surface. The scope does not include internal or external tooth washers, nor does it include spring lock washers made of other metals, such as copper.

HSLWs subject to the order are currently classifiable under subheading 7318.21.0030 of the *Harmonized Tariff Schedule of the United States* (''HTSUS''). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

Analysis of Comments Received

All issues raised in the post-preliminary comments by parties in this review are addressed in the memorandum from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to David M. Spooner, Assistant Secretary for Import Administration, Issues and Decision Memorandum for the Final Results of Certain Helical Spring Lock Washers from the People's Republic of China (January 15, 2008) (''Issues and Decision Memorandum''), which is hereby adopted by this notice. A list of the issues that parties raised and to which we responded in the Issues and Decision Memorandum is attached to this notice as an appendix. The Issues and Decision Memorandum is a public document and is on file in the Central Records Unit (''CRU'') in room B–099 in the main Commerce Department building, and is also accessible on the Web at *http://ia.ita.doc.gov/frn.* The paper copy and electronic version of the memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made changes in the margin calculations for HSW. *See* Issues and Decision Memorandum at Comments 1–3 and Comment 6.

We revised the calculation of the adverse facts available rate we have applied to packing usage rates for sales we did not verify. Specifically, we calculated a simple average exclusive of sales for which HSW over-stated that actual packing material usage, and used this rate to inflate the packing usage rates of all the sales that were not verified. *See* Comment 1.

We changed our surrogate value for steel wire rod (''SWR'') and are using Indian imports from Harmonized Tariff Schedule (''HTS'') numbers 7213.91 and 7213.99 to value SWR for the final results. We will weight-average HTS numbers 7213.91 and 7213.99 based on the March 2006 inventory-out quantities obtained at verification. *See* Comment 2.

We have included Indian imports from Germany in our SWR surrogate value calculation. We have excluded Indian imports from South Africa and Brazil in our SWR surrogate value calculation. *See* Comment 3.

We have excluded imports from North Korea and Belgium stainless SWR surrogate value calculation. *See* Comment 3.

We have revised our calculations of Suchi's financial ratios in two ways. First, we have not included octroi, insurance, and freight forwarding expenses in the calculations of Suchi's financial ratios. Second, we have excluded traded goods from the overhead ratio, but included traded goods in the SG&A and profit ratios. *See* Comment 6.

Final Results of Review

We determined that the following dumping margin exists for the period October 1, 2005, through September 30, 2006:

Exporter/manufacturer	Weighted-average margin percentage
Hangzhou Spring Washer Co., Ltd. (also known as Zhejiang Wanxin Group, Ltd.)	0.00

Assessment Rates

The Department intends to issue assessment instructions to U.S. Customs and Border Protection (''CBP'') 15 days after the date of publication of these final results of review. In accordance with 19 CFR 351.212(b)(1), we have calculated importer-specific assessment rates for merchandise subject to this review.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2)(C) of the Act: (1) For subject merchandise exported by HSW, the cash deposit rate will be zero; (2) for previously reviewed or investigated PRC and non-PRC exporters not listed above that have separate rates, the cash-deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash-deposit rate will continue to be the PRC-wide rate of 128.63 percent; and (4) for all non-PRC exporters of subject merchandise that have not received their own rate, the cash-deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These deposit requirements shall remain in effect until further notice.

Notification of Interested Parties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties. This notice also serves as a reminder to parties subject to administrative protective orders (''APOs'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation that is subject to sanction.

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

Dated: January 15, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

Appendix—List of Comments and Issues in the Issues and Decision Memorandum

Comment 1: Appropriate Adverse Facts Available
Comment 2: Surrogate Value for Steel Wire Rod: Source
Comment 3: Surrogate Value for Steel Wire Rod: Adjustments to Calculation
Comment 4: Surrogate Value for Hydrochloric Acid
Comment 5: Surrogate Financial Statements: Source
Comment 6: Surrogate Financial Statements: Adjustments to Calculation
Comment 7: Whether To Adjust Overhead Ratio for Environmental Compliance

[FR Doc. E8–1228 Filed 1–23–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE29

Endangered and Threatened Species; Recovery Plans; Final Recovery Plan for Southern Resident Killer Whales

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

ACTION: Notice of availability.

SUMMARY: We, the National Marine Fisheries Service (NMFS), announce the adoption of our final Endangered Species Act (ESA) Recovery Plan for the Southern Resident killer whale DPS (*Orcinus orca*). The Final Recovery Plan for Southern Resident Killer Whales (Final Recovery Plan) and the NMFS summary of and responses to public comments are now available.

ADDRESSES: The Recovery Plan, public comment summary and responses, and other supporting documents are available on-line on the NMFS web site *www.nwr.noaa.gov*. Copies of the Plan may be reviewed and/or copied at NMFS, Protected Resources Division, 7600 Sand Point Way NE, Seattle, WA, 98115.

FOR FURTHER INFORMATION CONTACT: Lynne Barre, NOAA/NMFS, Northwest Region, (206) 526–4745.

SUPPLEMENTARY INFORMATION: The Endangered Species Act (ESA) of 1973, as amended (15 U.S.C. 1531 *et seq.*) requires that NMFS develop and implement recovery plans for the conservation and survival of threatened and endangered species under its jurisdiction, unless it is determined that such plans would not result in the conservation of the species. NMFSWe announced the endangered listing of the Southern Resident killer whale distinct population segment (DPS) on November 18, 2005 (70 FR 69903). Prior to the ESA listing, NMFS designated the Southern Resident killer whale population as a depleted stock under the Marine Mammal Protection Act (MMPA; 16 U.S.C. 1361 *et seq.*) on May 29, 2003 (68 FR 31980). At the time of the designation, we announced our intention to develop a conservation plan.

We held a series of public meetings and technical workshops to gather input from Federal government agency representatives, state and tribal co-managers, Canadian officials, orca advocacy groups, non-governmental organizations, researchers, whale watch industry and concerned citizens. We circulated a preliminary draft conservation plan for public review on March 14, 2005. We received comments on the preliminary draft, and made revisions in response to the comments. We subsequently published a Notice of Availability of a Proposed Conservation Plan for Southern Resident Killer Whales in the **Federal Register** on October 3, 2005 (70 FR 57565) opening a public comment period. We received comments on the proposed conservation plan. Before the conservation plan was finalized, we listed the Southern Resident DPS as an endangered species. In developing a proposed recovery plan for the whales, we addressed the comments we had received on the proposed conservation plan and incorporated ESA elements into the plan, including discussions of the ESA section 4(a)(1) listing factors, critical habitat, section 7, and ESA recovery criteria. We published a Notice of Availability of the Proposed Recovery Plan for Southern Resident Killer Whales in the **Federal Register** on November 29, 2006 (71 FR 69101) opening another public comment period. We received 50 comment letters by mail, fax or e-mail and prepared a summary of the comments and provided information on our responses, including descriptions of edits made to the Final Recovery Plan to incorporate the comments. We also included new information, research results, and references that have become available since the proposed recovery plan was released.

The Final Recovery Plan

The ESA requires that recovery plans incorporate (1) objective, measurable criteria which, when met, would result in a determination that the species is no longer threatened or endangered; (2) site-specific management actions necessary to achieve the plan's goals; and (3) estimates of time required and costs to implement recovery actions. NMFS's goal is to restore the endangered Southern Resident DPS killer whales to the point where they are again secure, self-sustaining members of their ecosystems and no longer need the protections of the ESA.

The Final Recovery Plan provides background on the natural history of killer whales, population trends and the potential threats to their viability. The Plan lays out a recovery strategy to address the potential threats based on the best available science and includes recovery goals and criteria. The Plan is not regulatory, but presents guidance for use by agencies and interested parties to assist in the recovery of Southern Resident killer whales. The Plan identifies substantive actions needed to achieve recovery by addressing the threats to the species. The strategy for recovery includes linking management actions to an active research program to fill data gaps, and monitor activities to assess effectiveness. The Plan incorporates an adaptive management framework by which management actions and other elements will evolve and adapt as we gain information through research and monitoring and it describes the agency guidance on time lines for reviews of the status of species and recovery plans. To address threats related to prey availability and contaminants, the Plan references many of the significant efforts already underway to restore salmon runs and clean up Puget Sound, such as the Shared Strategy Puget Sound Salmon Recovery Plan and the Puget Sound Partnership.

We expect the Final Recovery Plan to help us and other Federal agencies take a consistent approach to section 7 consultations under the ESA and to other ESA decisions. For example, the plan will provide information on the biological context for the effects that a proposed action may have on the listed DPS. The best available information in the plan on the natural history, threats, and potential limiting factors, and priorities for recovery can be used to help assess risks. Consistent with the adoption of this Final Recovery Plan for Southern Resident killer whales, we will implement actions in the plan for which we have authority, work cooperatively on implementation of other actions, and encourage other Federal and state agencies to implement recovery actions for which they have responsibility and authority. Recovery of Southern Resident killer whales is a long-term effort and will require cooperation and coordination of Federal, state, tribal and local government agencies, and the community.

We conclude that the Final Recovery Plan meets the requirements of the ESA section 4(f) and are thus adopting it as the Final Recovery Plan for Southern Resident killer whales.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: January 17, 2008.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E8–1206 Filed 1–23–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

RIN 0648–XE30

Notice of Intent to Conduct Public Scoping and Prepare an Environmental Impact Report/Environmental Impact Statement (EIR/EIS) Regarding the Bay Delta Conservation Plan (BDCP) for the Sacramento-San Joaquin Delta, California

AGENCIES: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce; Fish and Wildlife Service (FWS), Interior.

ACTION: Notice of intent.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA), and the California Environmental Policy Act (CEQA) we, NMFS and FWS (Services), advise the public of our intent to collaborate with the State of California in gathering information necessary to prepare a joint Environmental Impact Report/Environmental Impact Statement (EIR/EIS) on the anticipated Bay Delta Conservation Plan (BDCP). The BDCP is being prepared through a unique collaboration of state, Federal and local agencies, of the Federal Endangered Species Act of 1973, as amended (Act). The California Department of Water Resources (DWR) intends to apply for Incidental Take Permits (ITP) from the Services based upon the BDCP in 2009 according to the planning schedule. At the same time, the Services would provide Biological Opinions and Incidental Take Statements (ITS) to the Bureau of Reclamation (Reclamation) for their participation and implementation of the BDCP. A goal of the BDCP is to meet the requirements of the California Natural Community Conservation Planning Act (NCCPA), California Fish and Game (CDFG), and provide the basis for DWR to apply for an ITP pursuant to CDFG Code. However, in the event that the BDCP does not meet the requirements of the NCCPA, DWR may alternatively seek an ITP under Section 2081 of the California Endangered Species Act, California Fish and Game Code 2050 *et seq.* These incidental take authorizations would allow the incidental take of threatened and endangered species resulting from certain covered activities that will be identified through the planning process, including those associated with water operations of the California State Water Project, as operated by DWR, and the Central Valley Project, as operated by Reclamation.

ADDRESSES: Comments and requests for information related to the preparation of the EIR/EIS should be sent to National Marine Fisheries Service, Attn: Rosalie del Rosario, 650 Capitol Mall, Suite 8–300, Sacramento, California 95819; or Fish and Wildlife Service, Attn: Lori Rinek, Chief, Conservation Planning and Recovery Division, Sacramento Fish and Wildlife Office, 2800 Cottage Way, W–2605, Sacramento, California 95825. Comments may also be submitted electronically to *BDCP-NEPA.SWR@noaa.gov*. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Rosalie del Rosario of NMFS at 916–930–3600 or Lori Rinek of FWS at 916–414–6600.

SUPPLEMENTARY INFORMATION:

Proposed Action

The California Department of Water Resources (DWR) intends to apply for Incidental Take Permits (ITP) from the Services based upon the BDCP in 2009 according to the planning schedule. Other applicants, co-applicants, or beneficiaries of an ITP, referred to as Potentially Regulated Entities, will be identified during this planning process. At the same time, the Services would issue Biological Opinions and Incidental Take Statements (ITS) to Reclamation for its participation and implementation of the BDCP. These Incidental Take Statements would allow for the incidental take of threatened and endangered species resulting from certain covered activities that will be identified through the planning process and are associated with water operations of the California State Water Project, as operated by DWR, and the Central Valley Project, as operated by Reclamation.

The Services provide this notice to (1) briefly describe the anticipated proposed action and the BDCP planning activities now underway to help develop that proposed action; (2) advise other Federal and State agencies, affected Tribes, and the public of our intention to continue to gather information to support the preparation of an EIR/EIS; (3) announce the initiation of early public scoping; and (4) obtain suggestions and information on the scope of issues to be included in the EIR/EIS. Written comments should be received on or before March 24, 2008.

The applicants have identified four potential water conveyance options that are being considered for the habitat conservation planning process: (1) the existing conveyance and system without physical change to conveyance facilities, (2) changes to conveyance in San Joaquin Old and Middle River channels plus separation of San Joaquin corridor from through-delta conveyance, (3) a dual conveyance in which existing conveyance would still be operational plus an isolated facility (not yet constructed) from the Sacramento River to the south Delta, and (4) an isolated conveyance facility (not yet constructed) from the Sacramento River to the south Delta. These four options are undergoing evaluations through the BDCP Steering Committee to assess the relative ability of each to contribute to the goals and objectives of the planning effort. Although the applicant has not yet decided which option(s) will be submitted for consideration under section 10 of the Endangered Species Act, the intent is to narrow the project focus to one or two of the four options or a mixture thereof by fall 2007.

Additional to the conveyance elements of the State Water Project (SWP) and Central Valley Project (CVP) options given above, covered activities may include, but are not necessarily limited to, existing or new activities related to:

1. Operational activities, including emergency preparedness, of the SWP and CVP
2. Operational activities related to water transfers involving Water Contractors or to serve environmental programs
3. Maintenance of the SWP, CVP and other Potentially Regulated Entities' facilities
4. Facility improvements of the SWP and CVP
5. Ongoing operation of and recurrent and future projects related to other Delta Water Users
6. Projects designed to improve salinity conditions
7. Conservation measures included in the BDCP, including, but not limited to adaptive habitat management, restoration, enhancement and monitoring activities.

Please refer to the Planning Agreement, para. 7.5, available at http://resources.ca.gov/bdcp/. The BDCP Planning Agreement was reached in October 2006 and was amended April 2007, to guide the BDCP process.

Planning Process

DWR and Reclamation, along with the Metropolitan Water District of Southern California, Kern County Water Agency, Santa Clara Valley Water District, Zone

7 Water Agency, San Luis & Delta-Mendota Water Authority, Westlands Water District, Contra Costa Water District, and Mirant Delta (known collectively as the ''Potentially Regulated Entities'' or PREs) are preparing the BDCP for their covered activities within the Geographic Scope described below. It is the goal of the PREs that the BDCP will (1) satisfy the requirements of Section 10(a)(1)(B) of the Act for non-Federal PREs and result in the issuance of ITPs from the Services to certain of the PREs, (2) be used in a concurrent consultation with other Federal agencies pursuant to Section 7 of the Act, resulting in the issuance of Biological Opinions, including ITSs, from the Services to certain of the PREs, (3) satisfy the requirements for an ITP under the California fish and wildlife protection laws, either pursuant to the Natural Community Conservation Plan Act (NCCPA), Section 2835 of the Fish and Game Code or Section 2081 of the Fish and Game Code.

The planning efforts for the BDCP are in its preliminary stages. Formal preparation of a draft EIR/EIS will commence when the planning efforts described below progress further in the coming months. The BDCP is being prepared with the cooperation of the Services, the California Resources Agency, CDFG, the California Bay Delta Authority, the PRE's as listed above, and key Non-Government Organizations including The Nature Conservancy, Environmental Defense, Defenders of Wildlife, Natural Heritage Institute, The Bay Institute, American Rivers, and the California Farm Bureau Federation. All of these agencies and organizations are members of a Steering Committee that will guide the preparation of the BDCP. The Services are participating in the Steering Committee's efforts on an ex officio basis, providing technical input and guidance in support of the Steering Committee's efforts. The participants are undertaking these planning efforts pursuant to the Planning Agreement.

A document from the BDCP Steering Committee titled ''The Bay Delta Conservation Plan: Points of Agreement for Continuing into the Planning Process,'' dated November 16, 2007, provides a summary of the planning process to date along with future direction and procedures. Through this document, the Steering Committee points to agreement on an approach to be evaluated for achieving the conservation and water supply goals. The primary new structural features of the water conveyance system to be evaluated are a new diversion point (or points) for water from the Sacramento River in the north Delta and an isolated water conveyance facility around the Delta. Modifications to existing south Delta facilities to reduce entrainment and otherwise improve the State Water Project's (SWP) and Central Valley Project's (CVP) ability to convey water through the Delta while contributing to near- and long-term conservation and water supply goals will also be evaluated.

Members of the public interested in participating in the BDCP process directly or interested in having access to information associated with the effort are encouraged to visit the Bay Delta Conservation Plan component of the California Resources Agency's website: *http://resources.ca.gov/bdcp/*. This website provides open access to comprehensive documentation of the planning process, and a detailed schedule of past and future planning activities. The following describes preliminary information identified by the Steering Committee for consideration in the BDCP development.

Geographic Scope

The planning area for the BDCP will consist of the aquatic ecosystems and natural communities, and potentially adjacent riparian and floodplain natural communities, within the Statutory Delta (California Water Code Section 12220), which includes parts of Yolo, Solano, Contra Costa, San Joaquin, and Sacramento Counties. However, it may be necessary for the BDCP to include conservation actions outside the Statutory Delta that advance the goals and objectives of the BDCP, including as appropriate, conservation actions in the Suisun Marsh, Suisun Bay, and areas upstream of the Delta. Any conservation actions taken outside the Statutory Delta would be implemented pursuant to cooperative agreements or similar mechanisms with local agencies, interested non-governmental organizations, landowners, and others. See Planning Agreement, para. 5.

Covered Species

Species that are intended to be the initial focus of the BDCP include aquatic species such as: Central Valley steelhead (*Oncorhynchus mykiss*), Central Valley Chinook salmon (*Oncorhynchus tshawytscha*) (spring run and fall/late-fall runs), Sacramento River Chinook salmon (winter run), Delta smelt (*Hypomesus transpacificus*), green sturgeon (*Acipenser medirostris*), white sturgeon (*Acipenser transmontanus*), splittail (*Pogonichthys macrolepidotus*), longfin smelt (*Spirinchus thaleichthys*). Other species that will be considered for inclusion in the BDCP include Swainson's hawk (*Buteo swainsoni*), bank swallow (*Riparia riparia*), giant garter snake (*Thamnophis gigas*), and valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*). See Planning Agreement, para. 6.1.1. This list identifies the species that will be evaluated for inclusion in the BDCP as proposed covered species, but the list may vary or change as the planning process progresses. The participants anticipate that species may be added or removed from the list once more is learned about the nature of the covered activities and the impact of covered activities on native species within the planning area.

Planning Goals

The BDCP will include goals and objectives for the management of Covered Activities and conservation of Covered Species. As proposed in the Planning Agreement (para.3), the planning goals include:

1. Provide for the conservation and management of covered species within the planning area;
2. Preserve, restore and enhance aquatic, riparian and associated terrestrial natural communities and ecosystems that support covered species within the planning area through conservation partnerships;
3. Allow for projects that restore and protect water supply, water quality, ecosystem, and ecosystem health to proceed within a stable regulatory framework;
4. Provide a means to implement covered activities in a manner that complies with applicable State and federal fish and wildlife protection laws, including the Natural Communities Conservation Planning Act or the California Endangered Species Act, the Federal Endangered Species Act, and other environmental laws, including CEQA and NEPA;
5. Provide a basis for permits necessary to lawfully take covered species;
6. Provide a comprehensive means to coordinate and standardize mitigation and compensation requirements for covered activities within the planning area;
7. Provide a less costly, more efficient project review process which results in greater conservation values than project-by-project, species-by-species review; and
8. Provide clear expectations and regulatory assurances regarding covered activities occurring within the planning area.

Statutory Authority

Section 9 of the Act (16 U.S.C. 1538) and implementing regulations (50 CFR 17.21, and 17.31(a)) prohibit the ''taking or animal species listed as endangered or threatened. The term ''take'' is defined under the Act to mean harass, harm, pursue, hunt, shoot, wound kill, trap, capture or collect, or attempt to engage in any such conduct (16 U.S.C. 1532 (10)). ''Harm'' is defined by FWS regulation to include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding and sheltering (50 CFR 17.3). NMFS' definition of harm includes significant habitat modification of degradation where it actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, spawning, migrating, rearing and sheltering (64 FR 60727, November 8, 1999).

Section 7 of the Act outlines the procedures for federal interagency cooperation to conserve federally listed species and designated critical habitats (U.S.C. 1531 *et seq.*) Section 7(a)(1) of the Act directs the Secretaries of Interior and Commerce (Secretaries) to review other programs administered by them and utilize such programs to further the purposes of the Act. It also directs all other Federal agencies to utilize their authorities in furtherance of the purposes of the Act by carrying out programs for the conservation of species listed pursuant to the Act. Section 7(a)(2) states that each Federal agency shall, in consultation with the Secretaries, insure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. Sections 7(b)(4) and 7(o)(2) of the Act allow for taking of listed species that is incidental and not an intended part of a Federal action if such taking is in compliance with the terms and conditions of an incidental take statement provided by the Services.

Section 10 of the Act and implementing regulations provide for the issuance of incidental take permits (ITPs) to non-federal applicants to authorize incidental take of endangered and threatened species (16 U.S.C. 1539(a); 50 CFR 17.22, and 17.32(b)). Any proposed take must be incidental to an otherwise lawful activity, must not appreciably reduce the likelihood of the survival and recovery of the species in the wild, and must be minimized and mitigated to the maximum extent practicable. In addition, an applicant must prepare a Habitat Conservation Plan (HCP) describing the impact that will likely result from such taking, a plan for minimizing and mitigating the impacts of such incidental take, the funding available to implement the plan, alternatives to such taking, and the reasons such alternatives are not being implemented.

NEPA (42 U.S.C. 4321 *et seq.*) requires that Federal agencies conduct an environmental analysis of their proposed actions to determine if the actions may significantly affect the human environment. Under NEPA and its implementing regulations (40 CFR 1500 *et seq.*; NOAA Administrative Order 216–6; 40 CFR parts 1500–1508), a reasonable range of alternatives to the proposed action are developed and considered in the Services' EIR/EIS. Alternatives considered for analysis in an EIR/EIS may include: variations in the scope or types of covered activities; variations in the location, amount and types of conservation measures, timing of project activities; variations in permit duration; or a combination of these or other elements. In addition, an EIR/EIS will identify potentially significant direct, indirect, and cumulative effects, and possible mitigation for those significant effects, on biological resources, land use, air quality, water quality, water resources, socioeconomics, environmental justice, cultural resources, and other environmental issues that could occur with the implementation of the proposed action and alternatives.

Schedule

The schedule for this EIR/EIS depends upon the development of the draft BDCP, which is expected to occur by early 2009. We will publish additional notices about the proposed action and public participation once the elements of the comprehensive plan are developed.

Request for Comments

Environmental review of the EIR/EIS will be conducted in accordance with the requirements of NEPA (42 U.S.C. 4321 *et seq.*), its implementing regulations (40 CFR parts 1500–1508), other applicable regulations, and the Services' procedures for compliance with those regulations; and according to the requirements of CEQA (California Public Resources Code Section 21000 et. seq) and the State CEQA Guidelines (14 California Code of Regulations 15000 *et seq.*). This notice is being furnished in accordance with 40 CFR 1501.7, and 1508.22 to obtain suggestions and information from other agencies and the public on the scope of issues and alternatives that will be addressed in the EIR/EIS. The primary purpose of the scoping process is to identify important issues raised by the public related to the issuance of ITPs for the BDCP. Written comments from interested parties are invited to ensure that the full range of issues related to the development of the BDCP and issuance of the ITPs are identified. Comments during this stage of the scoping process will only be accepted in written form. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

Our practice is to make comments, including names, home addresses, home phone numbers, and email addresses of respondents, available for public review. Individual respondents may request that we withhold their names and /or homes addresses, etc., but if you wish us to consider withholding this information you must state this prominently at the beginning of your comments. In addition, you must present a rationale for withholding this information. This rationale must demonstrate that disclosure would constitute a clearly unwarranted invasion of privacy. Unsupported assertions will not meet this burden. In the absence of exceptional, documentable circumstances, this information will be released. We will always make submissions from organizations or businesses, and from individuals identifying themselves as representatives of or officials of organizations or businesses, available for public inspection in their entirety.

Reasonable Accommodation

Information regarding this proposed action is available in alternative formats upon request.

Dated: January 15, 2008.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

Dated: January 15, 2008.

Dale Morris,

Acting Deputy Regional Director, U.S. Fish and Wildlife Service, Region 8, Sacramento, CA.

[FR Doc. E8–1219 Filed 1–23–08; 8:45 am]

BILLING CODE 3510–S; 4310–55–S

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

The Continued Transition of the Technical Coordination and Management of the Internet Domain Name and Addressing System: Midterm Review of the Joint Project Agreement

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce

ACTION: Notice of Public Meeting

SUMMARY: The National Telecommunications and Information Administration (NTIA), U.S.Department of Commerce (Department), will hold a public meeting on February 28, 2008, to discuss the mid-term review of the Joint Project Agreement (JPA) between the Department and the Internet Corporation for Assigned Names and Numbers (ICANN).

DATES: The meeting will be held on February 28, 2008, from 9:00 a.m. to 12:00 p.m., Eastern Standard Time. Registration will start at 8:30 a.m.

ADDRESSES: The meeting will be held in the Auditorium at the U.S. Department of Commerce, 1401 Constitution Avenue, N.W., Washington, D.C. (Please enter at the main entrance on 14th Street). The handicapped accessible entrance is located at the 14th Street Aquarium Entrance.

FOR FURTHER INFORMATION CONTACT: For further information regarding the meeting, contact Ashley Heineman, Telecommunications Policy Specialist, at (202) 482–0298 or aheineman@ntia.doc.gov.

SUPPLEMENTARY INFORMATION: NTIA and ICANN entered into the JPA on September 29, 2006. (The text of the agreement is available on NTIA's website at http://www.ntia.doc.gov/ntiahome/domainname/agreements/jpa/ICANNJPA__09292006.doc.) The JPA provides for the Department to conduct a midterm review of progress achieved on each ICANN activity and responsibility contained in the JPA and envisions consultation with interested stakeholders. To that end, on November 2, 2007, NTIA published a Notice of Inquiry (NOI) seeking comments on ICANN's progress towards achieving the responsibilities identified in the JPA. 72 Fed. Reg. 62220 (Nov. 2, 2007). (The text of the NOI is available on NTIA's website at http://www.ntia.doc.gov/ntiahome/domainname/jpamidtermreview.html.)

On February 28, 2008, NTIA will hold a public meeting to discuss comments received in response to the NOI and other stakeholder views and to facilitate further public discussion on the progress ICANN has made in fulfilling its responsibilities contained in the JPA. The agenda for the public meeting will be posted on NTIA's website at least one week prior to the meeting. This meeting will be webcast. The agenda and webcast information will be available on NTIA's website at http://www.ntia.doc.gov/ntiahome/domainname/jpamidtermreview.html.

The meeting will be open to members of the public on a first-come, first-served basis. The meeting will be physically accessible to people with disabilities. Individuals requiring special services, such as sign language interpretation or other ancillary aids, should communicate their needs to Ashley Heineman at least two (2) days prior to the meeting.

Due to security requirements and to facilitate entry to the Department of Commerce building, anyone wishing to attend must contact Ashley Heineman at (202) 482–0298 or aheineman@ntia.doc.gov at least five (5) days prior to the meeting in order to provide the necessary clearance information. Attendees should arrive at least one-half hour prior to the start of the meeting and must present a valid passport or other photo identification up their arrival. Members of the public will have an opportunity to ask questions at the meeting.

Dated: January 18, 2008.

Kathy D. Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. E8–1180 Filed 1–23–08; 8:45 am]

BILLING CODE 3510–60–S

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

[Docket No. PTO–C–2008–0001]

National Medal of Technology and Innovation Call for 2008 Nominations

AGENCY: United States Patent and Trademark Office.

ACTION: Notice and request for nominations.

SUMMARY: The Department of Commerce (United States Patent and Trademark Office) is accepting nominations for its National Medal of Technology and Innovation (NMTI) program.

Since establishment by Congress in 1980, the President of the United States has awarded the National Medal of Technology and Innovation (formerly known as the National Medal of Technology) annually to our Nation's leading innovators. If you know of a candidate who has made an outstanding, lasting contribution to the economy through the promotion of technology or technological manpower, you may obtain a nomination form from: *http://www.uspto.gov/nmti.*

Eligibilty and Criteria: Information on eligibility and nomination criteria is provided on the Nominations Guidelines Form at *http://www.uspto.gov/nmti.*

DATES: The deadline for submission of an application is May 30, 2008.

ADDRESSES: The NMTI Nomination form for year 2008 may be obtained by visiting the Web site at *http://www.uspto.gov/nmti.* Nomination applications should be submitted to Jennifer Lo, Program Manager, National Medal of Technology and Innovation Program, by electronic mail to: *NMTI@uspto.gov* or by mail to: Jennifer Lo, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22323–1450.

FOR FURTHER INFORMATION CONTACT: Jennifer Lo, Program Manager, National Medal of Technology and Innovation Program, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450, telephone (571) 272–7640, or electronic mail: *nmti@uspto.gov.*

SUPPLEMENTARY INFORMATION: Enacted by Congress in 1980, the Medal of Technology was first awarded in 1985. On August 9, 2007, the President signed the America COMPETES (Creating Opportunities to Meaningfully Promote Excellence in Technology, Education, and Science) Act of 2007. The Act amended Section 16 of the Stevenson-Wydler Technology Innovation Act of 1980, changing the name of the Medal to the ''National Medal of Technology and Innovation.'' The Medal is the highest honor awarded by the President of the United States to America's leading innovators in the field of technology, and is given annually to individuals, teams, or companies who have made outstanding contributions to the promotion of technology or technological manpower for the improvement of the economic, environmental or social well-being of the United States.

The primary purpose of the National Medal of Technology and Innovation is to recognize American innovators whose vision, creativity, and brilliance in moving ideas to market has had a profound and lasting impact on our economy and way of life. The Medal highlights the national importance of

fostering technological innovation based upon solid science, resulting in commercially successful products and services.

Dated: January 16, 2008.

Jon W. Dudas,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 08–251 Filed 1–23–08; 8:45am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. PTO–C–2007–0053]

National Medal of Technology and Innovation Nomination Evaluation Committee

AGENCY: United States Patent and Trademark Office.

ACTION: Notice and request for nominations.

SUMMARY: The Department of Commerce (United States Patent and Trademark Office) is requesting nominations of individuals to serve on the National Medal of Technology and Innovation Nomination Evaluation Committee. The United States Patent and Trademark Office will consider nominations received in response to this notice as well as from other sources. The **SUPPLEMENTARY INFORMATION** section of this notice provides Committee and membership criteria.

DATES: Please submit nominations within 60 days of the publication of this notice.

ADDRESSES: Nominations should be submitted to Jennifer Lo, Program Manager, National Medal of Technology and Innovation Program, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450. Nominations also may be submitted via fax: (571) 270–9100 or by electronic mail to: *nmti@uspto.gov*.

FOR FURTHER INFORMATION CONTACT: Jennifer Lo, Program Manager, National Medal of Technology and Innovation Program, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450, telephone (571) 272–7640, or electronic mail: *nmti@uspto.gov*.

SUPPLEMENTARY INFORMATION: The Committee was established in accordance with the Federal Advisory Committee Act (FACA) (Title 5, United States Code, Appendix 2). The following provides information about the Committee and membership:

- Committee members are appointed by and serve at the discretion of the Secretary of Commerce. The Committee provides advice to the Secretary on the implementation of Public Law 96–480 (15 U.S.C. 3711), as amended August 9, 2007.
- The Committee functions solely as an advisory body under the FACA. Members are appointed to the 12-member Committee for a term of three years. Each will be reevaluated at the conclusion of the three-year term with the prospect of renewal, pending Advisory Committee needs and the Secretary's concurrence. Selection of membership is made in accordance with applicable Department of Commerce guidelines.
- Members are responsible for reviewing nominations and making recommendations for the Nation's highest honor for technological innovation, awarded annually by the President of the United States. Members of the Committee must have an understanding of, and experience in, developing and utilizing technological innovation and/or be familiar with the education, training, employment and management of technological manpower.
- Under the FACA, membership on a committee must be balanced. To achieve balance, the Department is seeking additional nominations of candidates from small, medium-sized, and large businesses or with special expertise in the following sub-sectors of the technology enterprise:

Medical Innovations/Bioengineering and Biomedical Technology
Technology Management/Computing/IT/Manufacturing Innovation
Technological Manpower/Workforce Training/Education

Committee members generally are Chief Executive Officers or former Chief Executive Officers, former winners of the National Medal of Technology; presidents or distinguished faculty of universities; or senior executives of non-profit organizations. As such, they not only offer the stature of their positions but also possess intimate knowledge of the forces determining future directions for their organizations and industries. The Committee as a whole is balanced in representing geographical, professional, and diverse interests.

Nomination Information

- Nominees must be United States citizens, must be able to fully participate in meetings pertaining to the review and selection of finalists for the National Medal of Technology and Innovation, and must uphold the confidential nature of an independent peer review and competitive selection process.
- The United States Patent and Trademark Office is committed to equal opportunity in the workplace and seeks a broad-based and diverse Committee membership.

Dated: January 16, 2008.

Jon W. Dudas,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. E8–1139 Filed 1–23–08; 8:45 am]

BILLING CODE 3510–16–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Renewal of a Currently Approved Information Collection

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning its proposed conference surveys of persons attending the annual National Conference on Volunteering. The surveys will be used to assess workshops, presenters, and the conference overall.

Copies of the information collection requests can be obtained by contacting the office listed in the addresses section of this notice.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by March 24, 2008.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods: (1) By mail sent to: Corporation for National and

Community Service, Department of Research and Policy Development; Attention Brooke Nicholas, Policy Analyst, 10th Floor; 1201 New York Avenue, NW., Washington, DC, 20525. (2) By hand delivery or by courier to the Corporation's mailroom at Room 8100 at the mail address given in paragraph (1) above, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays. (3) By fax to: (202) 606–6627, Attention Brooke Nicholas, Policy Analyst. (4) Electronically through the Corporation's e-mail address system: *bnicholas@cns.gov*.

FOR FURTHER INFORMATION CONTACT: Brooke Nicholas, (202) 606–6627, or by e-mail at *bnicholas@cns.gov.*

SUPPLEMENTARY INFORMATION: The Corporation is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, 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;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Background

In partnership with the Points of Light Foundation, the Corporation for National and Community Service hosts an annual conference on volunteering. The conference encourages the volunteering community to share information and practices, learn new skills and establish relationships. Attendees include leaders from: Nonprofits and civic infrastructures, academic institutions, businesses and government agencies.

As a part of learning the extent in which we reached these objectives, we need to collect outcome data through four surveys that reveals: How well the conference compares with past conferences; what improvements have been made; and what are some suggestions for the future.

Current Action

Type of Review: New.

Agency: Corporation for National and Community Service.

Title: National Conference Survey.

OMB Number: None.

Frequency: Annual.

Affected Public: Individuals, community and faith-based organizations, non-profits, federal, international, state and local government, education institutions and businesses.

Number of Respondents: 4,000.

Estimated Time per Respondent: Fifteen minutes per survey (with four or more surveys).

Total Burden Hours: 4,000 hours.

Total Burden Cost (capital/startup): None.

Total Annual Cost (operating/maintaining systems or purchasing services): None.

Dated: January 16, 2008.

Bob Grimm,

Director, Department of Research and Policy Development.

[FR Doc. E8–1230 Filed 1–23–08; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 08–18]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 08–18 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: January 17, 2008.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY
WASHINGTON, DC 20301-2800

JAN 1 4 2008
In reply refer to:
I-07/013103-CFM

The Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, DC 20515-6501

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 08-18, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to Saudi Arabia for defense articles and services estimated to cost $123 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Jeffrey A. Wieringa
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Same ltr to:

House	Senate
Committee on Foreign Affairs	Committee on Foreign Relations
Committee on Armed Services	Committee on Armed Services
Committee on Appropriations	Committee on Appropriations

Transmittal No. 08-18

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser:** Saudi Arabia

(ii) **Total Estimated Value:**

Major Defense Equipment*	$ 48 million
Other	$ 75 million
TOTAL	$123 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** 900 Joint Direct Attack Munitions (JDAM) tail kits (which include 550 GBU-38 for MK-82, 250 GBU-31 for MK-84, 100 GBU-31 for BLU-109). Also included are: bomb components, mission planning, aircraft integration, publications and technical manuals, spare and repair parts, support equipment, contractor engineering and technical support, and other related elements of program support.

(iv) **Military Department:** Air Force (YQB)

(v) **Prior Related Cases, if any:** None.

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** See Annex attached

(viii) **Date Report Delivered to Congress:** JAN 14 2008

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Saudi Arabia – Joint Direct Attack Munitions

The Government of Saudi Arabia has requested a possible sale of 900 Joint Direct Attack Munitions (JDAM) tail kits (which include 550 GBU-38 for MK-82, 250 GBU-31 for MK-84, 100 GBU-31 for BLU-109). Also included are: bomb components, mission planning, aircraft integration, publications and technical manuals, spare and repair parts, support equipment, contractor engineering and technical support, and other related elements of program support. The estimated cost is $123 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East. Saudi Arabia will have no difficulty absorbing this equipment into its armed forces.

The proposed sale will greatly improve the accuracy of unguided, general-purpose bombs in any weather condition enabling the Royal Saudi Air Force's (RSAF) F-15S aircraft to participate to a greater degree in coalition operations. The proposed sale of JDAMs for use on RSAF F-15S aircraft will enhance training opportunities; increase RSAF F-15 operational capability, sustainability, and interoperability with USAF, Gulf Cooperation Council, and other coalition air forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be The Boeing Company of St. Louis, Missouri. There are no known offset agreements in connection with this proposed sale.

Implementation of this proposed sale will require the assignment of approximately four contractor representatives to Saudi Arabia to provide technical assistance to integrate the weapons into the operational units. Also, this program will require annual Program Management Reviews in Saudi Arabia with U.S and contractor personnel participation for a period of approximately one week.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 08-18

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The Joint Direct Attack Munition is actually a guidance kit that converts existing unguided free-fall bombs into precision-guided "smart" munitions. By adding a new tail section containing an Inertial Navigation System (INS) guidance/Global Positioning System (GPS) guidance to MK-82, MK-84, and BLU-109 bombs, the cost effective JDAM provides highly accurate weapon delivery in any "flyable" weather. The INS, using updates from the GPS, helps guide the bomb to the target via the use of movable tail fins. The JDAM All Up Round (AUR) and all of its components are Unclassified, technical data for JDAM is classified up to Secret.

2. Weapon accuracy is dependent on target coordinates and present position as entered into the guidance control unit. After weapon release, movable tail fins guide the weapon to the target coordinates. In addition to the tail kit, other elements in the overall system that are essential for successful employment include:

Access to accurate target coordinates
INS/GPS capability
Operational Test and Evaluation Plan

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. 08–260 Filed 1–23–08; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0037]

Federal Acquisition Regulation;Information Collection; Presolicitation Notice

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning presolicitation notice. A request for public comments was published in the **Federal Register** at 72 FR 62444, on November 5, 2007. No comments were received. The clearance currently expires on April 30, 2008.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before February 25, 2008.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (VPR), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Cecelia Davis, Contract Policy Division, GSA (202) 219–0202.

SUPPLEMENTARY INFORMATION:

A. Purpose

Presolicitation notices are used by the Government for several reasons, one of which is to aid prospective contractors in submitting proposals without undue expenditure of effort, time, and money. The Government also uses the presolicitation notices to control printing and mailing costs. The presolicitation notice response is used to determine the number of solicitation documents needed and to assure that interested offerors receive the solicitation documents. The responses are placed in the contract file and referred to when solicitation documents are ready for mailing. After mailing, the responses remain in the contract file and become a matter of record.

B. Annual Reporting Burden

Respondents: 5,310.
Responses Per Respondent: 8.
Annual Responses: 42,480.
Hours Per Response: .08.
Total Burden Hours: 3,398.
OBTAINING COPIES OF PROPOSALS: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (VPR), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0037, Presolicitation Notice, in all correspondence.

Dated: January 15, 2008

Al Matera,

Director,Office of Acquisition Policy.

[FR Doc. E8–1196 Filed 1–23–08; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0153]

Federal Acquisition Regulation; Information Collection; OMB Circular A–119

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0153).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning OMB Circular A–119. The clearance currently expires on May 31, 2008.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before March 24, 2008.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (VPR), 1800 F Street, NW, Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0153, OMB Circular A–119, in all correspondence.

FOR FURTHER INFORMATION CONTACT Ms. Cecelia Davis, Contract Policy Division, GSA (202) 219–0202.

SUPPLEMENTARY INFORMATION:

A. Purpose

On February 19, 1998, a revised OMB Circular A–119, ''Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities,'' was published in the **Federal Register** at 63 FR 8545, February 19, 1998. FAR Subparts 11.1 and 11.2 were revised and a solicitation provision was added at 52.211–7, Alternatives to Government-Unique Standards, to implement the requirements of the revised OMB circular. If an alternative standard is proposed, the offeror must furnish data and/or information regarding the alternative in sufficient detail for the Government to determine if it meets the Government's requirements.

B. Annual Reporting Burden

Respondents: 100.
Responses Per Respondent: 1.
Total Responses: 100.
Hours Per Response: 1.
Total Burden Hours: 100.
OBTAINING COPIES OF PROPOSALS: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (VPR), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0153, OMB Circular A–119, in all correspondence.

Dated: January 15, 2008.

Al Matera,

Director, Office of Acquisition Policy.

[FR Doc. E8–1170 Filed 1–23–07; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; Acquisition of Information Technology (OMB Control Number 0704–0341)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. *DoD invites comments on:* (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection requirement for use through April 30, 2008. DoD proposes that OMB extend its approval for use for three additional years.

DATES: DoD will consider all comments received by March 24, 2008.

ADDRESSES: You may submit comments, identified by OMB Control Number 0704–0341, using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *E-mail: dfars@osd.mil*. Include OMB Control Number 0704–0341 in the subject line of the message.
- *Fax:* 703–602–7887.
- *Mail:* Defense Acquisition Regulations System, Attn: Ms. Felisha Hitt, OUSD(AT&L)DPAP(DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062.
- *Hand Delivery/Courier:* Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

Comments received generally will be posted without change to *http://www.regulations.gov*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Felisha Hitt, 703–602–0310. The information collection requirements addressed in this notice are available on the World Wide Web at: *http://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html*. Paper copies are available from Ms. Felisha Hitt, OUSD(AT&L)DPAP(DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 239, Acquisition of Information Technology, and the associated clauses at DFARS 252.239–7000 and 252.239–7006; OMB Control Number 0704–0341.

Needs and Uses: This requirement provides for the collection of information from contractors regarding security of information technology; tariffs pertaining to telecommunications services; and proposals from common carriers to perform special construction under contracts for telecommunications services. Contracting officers and other DoD personnel use the information to ensure that information systems are protected; to participate in the establishment of tariffs for telecommunications services; and to establish reasonable prices for special construction by common carriers.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Annual Burden Hours: 1,622.

Number of Respondents: 521.

Responses Per Respondent: Approximately 4.

Annual Responses: 1,959.

Average Burden Per Response: Approximately 1 hour.

Frequency: On occasion.

Summary of Information Collection

The clause at DFARS 252.239–7000, Protection Against Compromising Emanations, requires that the contractor provide, upon request of the contracting officer, documentation that information technology used or provided under the contract meets appropriate information assurance requirements.

The clause at DFARS 252.239–7006, Tariff Information, requires that the contractor provide to the contracting officer: (1) Upon request, a copy of the contractor's existing tariffs; (2) before filing any application to a Federal, State, or other regulatory agency for new rates, charges, services, or regulations relating to any tariff or any of the facilities or services to be furnished solely or primarily to the Government, and, upon request, a copy of all information, material, and data developed or prepared in support of or in connection with such an application; and (3) a notification to the contracting officer of any application filed by anyone other than the contractor that may affect the rate or conditions of services under the agreement or contract.

DFARS 239.7408–1 requires the contracting officer to obtain a detailed special construction proposal from a common carrier that submits a proposal or quotation with special construction requirements related to the performance of basic telecommunications services.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

[FR Doc. E8–1090 Filed 1–23–08; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Navy

Decision Memorandum Accepting Alternative Arrangements for the U.S. Navy's Southern California Operating Area Composite Training Unit Exercises (COMPTUEXs) and Joint Task Force Exercises (JTFEXs) Scheduled To Occur Between Today and January 2009

AGENCY: Department of the Navy, DoD.

ACTION: Notice of Decision Memorandum.

SUMMARY: The Department of the Navy announces its decision to accept alternative arrangements approved by the Council on Environmental Quality (CEQ) pursuant to 40 CFR 1506.11 for implementing the procedural provisions of the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, for the Navy's Southern California (SOCAL) Operating Area Composite Training Unit Exercises (COMPTUEXs) and Joint Task Force Exercises (JTFEXs) scheduled to occur between today and January 2009.

SUPPLEMENTARY INFORMATION: The text of the entire Decision Memorandum is provided as follows:

On January 10, 2008, the Department of the Navy (Navy) sought Council on Environmental Quality (CEQ) approval of alternative arrangements pursuant to 40 CFR 1506.11 for implementing the procedural provisions of the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.* (NEPA), for MFA sonar training during the remaining five COMPTUEXs and four JTFEXs scheduled to occur between today and January 23, 2009, in the Southern California (SOCAL) Operating Area. On January 11, 2008, the Navy reaffirmed its request. On January 15 CEQ concluded consultation and approved alternative arrangements pursuant to 40 CFR 1506.11 for implementing the procedural provisions of (NEPA). This memorandum documents the Navy's decision to accept the alternative arrangements.

Background

Framework

NEPA: NEPA requires Navy to undertake an assessment of the environmental effects of its proposed actions prior to making decisions. The CEQ Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act provide for situations when emergency circumstances make it necessary to make decisions and take action with significant environmental impact without observing the provisions of the CEQ Regulations (40 CFR § 1506.11). Specifically, the agency should consult with CEQ about alternative arrangements for actions necessary to control the immediate impacts of the emergency.

Title 10: The Fleet Response Training Plan (FRTP) is one of the processes used to ensure the Chief of Naval Operation's (CNO) obligation under Section 5062 of Title 10 of the U.S. Code, which requires organization, training and equipping of all naval forces for combat. The FRTP is an arduous training cycle that ensures Navy forces achieve the highest possible readiness levels prior to deployment. As part of the FRTP, the Navy conducts COMPTUEXs and JTFEXs to achieve required Navy

capabilities and missions in support of combatant commander and Navy requirements. Both JTFEX and COMPTUEX exercises are included in the integrated phase of training for U.S. and some allied forces, which requires a synthesis of unit and staff actions into a coordinated Strike Group necessary for surge and readiness certification.

The Vital Importance of Training with Mid-Frequency Active (MFA) Sonar during These Major Exercises: Anti-submarine warfare (ASW) is the Pacific Fleet's #1 war-fighting priority and critical to our national defense. Today's modern, quiet diesel-electric submarines employ state-of-the-art sound silencing technologies and sound isolation technologies. Additionally, they operate advanced propulsion systems that include high endurance battery systems and air-independent propulsion systems. These advances, combined with special hull treatments that significantly dampen submarine noise and reduce vulnerability to active sonar prosecution, make them highly potent adversaries. Diesel-electric submarines so equipped can covertly operate in coastal and open ocean areas, blocking Navy access to combat zones and increasing United States vessels' vulnerability to torpedo and anti-ship missile attacks. Detecting, identifying, locating, tracking, and if necessary, neutralizing a diesel-electric submarine is vitally important to the Navy's ability to conduct operations, accomplish its missions and ultimately prevail in conflict.

Submarines are operated by numerous navies, including potential adversaries in the Asia-Pacific and Middle East areas. Navy Strike Groups are continuously deployed to these high-threat areas. These missions require being able to access and operate in waters near shore, control strategic maritime transit routes and international straits, and protect sea lines of communications supporting international commerce. In preparing for these missions, the thousands of individuals in a Pacific Fleet Strike Group must train in the use of MFA sonar in a coordinated manner in a realistic environment prior to deployment. MFA sonar is defined as an active sonar system that operates within the 1 kHz to 10 kHz frequency range. MFA sonar capability allows the Strike Group to defend itself against quiet diesel-electric submarines that may come within range or attack any of the ships in the Strike Group. Training in the use of MFA sonar in the COMTUEX and JTFEX exercises is a vital component of certification and employment of these assets in support of national security interests around the globe. The five COMPTUEXs and four JTFEXs scheduled to occur between today and January 23, 2009, in the Southern California (SOCAL) Operating Area are the only opportunities for these Strike Groups to achieve their required combat training.

The SOCAL Operating Area is uniquely suited to conducting the Navy COMPTUEX and JTFEX because it contains all of the land, air, and at-sea bases necessary for conducting the exercises, and the shallow coastal areas in SOCAL realistically simulate areas where the Navy is likely to encounter hostile submarines. The SOCAL Operating Area includes Warning Area 291 (W–291), and the Southern California Antisubmarine Warfare Range (SOAR) that is an instrumented underwater range which allows the Navy to monitor and evaluate the success of the Strike Group training. The use of MFA sonar will be within W–291 and SOAR.

Environmental Effects: The habitat and species in the SOCAL operating area have been monitored and studied over the last 40 years, and the Navy has extensively used MFA sonar in the area over the same period. Over that period, the intensity (i.e., the dB level of the sonar source) of the Navy's MFA sonar systems has remained the same. Since 1992, the Navy's use of MFA sonar in terms of the number of training hours has declined. It is emphasized that there have been no documented incidents of harm, injury, or death to marine mammals resulting from exposure to MFA sonar in the SOCAL Operating Area. There have also been no stranding incidents or population-level effects attributable to MFA sonar in the SOCAL Operating Area. No systematic declines in the stocks of marine mammals have occurred and the stocks of many species, such as humpback whales, blue whales, harbor seals, and common dolphins, are stable or improving. The Eastern North Pacific gray whale stock increased and the species was delisted, but is currently experiencing habitat changes due to sea ice melting patterns, and undersized gray whales have been reported in the media lately. Strandings of small cetaceans and California sea lions are common, usually attributed to fishery interaction, disease, or harmful algal blooms. There have also been several individual beaked whale strandings, usually attributed to disease or fishery interaction. In several of these individual strandings, the cause is unknown, but there has been no apparent link to sonar.

The Navy is evaluating the environmental impact of MFA sonar training exercises through its development of the SOCAL Range Complex environmental impact statement (SOCAL EIS). The Navy began the SOCAL EIS process in late 2006 and published its notice of intent on December 21, 2006. That EIS will meet the procedural requirements of NEPA for all training, including MFA sonar training in SOCAL. To comply with NEPA procedural requirements, while developing the EIS, the Navy prepared an environmental assessment of the SOCAL training proposed for the time period prior to completion of the EIS. In addition, the Navy issued a consistency determination per the procedural requirements of the Coastal Zone Management Act (CZMA), 16 U.S.C. 1451 *et seq.*

In January 2007, the Deputy Secretary of Defense issued a National Defense Exemption (NDE) under the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1371(f)). The NDE provides for protection of marine mammals, in the absence of an MMPA Letter of Authorization, by including 29 specific conditions to minimize potential impacts on marine mammals. These 29 mitigation measures were developed in coordination with the National Marine Fisheries Service (NMFS), the agency with substantive responsibility for marine mammals. The NDE provides the Navy the ability to execute the plan coordinated with the Department of Commerce to obtain a Letter of Authorization under the usual procedural requirements of the MMPA. The plan requires the Navy to come into compliance with the MMPA as part of the SOCAL EIS process which will be completed when the NDE expires on January 23, 2009. The potential effects of MFA sonar training on threatened and endangered marine mammals were further analyzed in consultation with NMFS under section 7 of the Endangered Species Act (ESA), 16 U.S.C. 1531 *et seq.* In February of 2007, the Navy concluded consultation with NMFS, which issued a Biological Opinion on February 9, 2007. NMFS issued a Biological Opinion that includes an incidental take statement that exempts the Navy from the prohibitions in section 9 of the ESA through January 2009. The Biological Opinion found that the Navy's actions were not likely to result in jeopardy to any listed species nor adversely modify any designated critical habitat, and includes an incidental take statement that exempts the Navy from the prohibitions in section 9 of the Endangered Species Act through January 2009.

For the planned exercises, the Navy conducted acoustic propagation modeling and effects analysis and determined that there would be no permanent physical effects on marine mammals from MFA sonar exposure. The NMFS further reviewed the environmental effects and found any potential behavioral or physiological effects would be temporary effects to individual marine mammals.

In January 2008, NMFS further reviewed the environmental effects of Navy training exercises in SOCAL on marine mammals in and adjacent to SOCAL, determining that while there is some potential for injury, the mitigation measures employed as a result of the NDE and the reporting and monitoring measures outlined in the Biological Opinion will minimize that risk to marine mammals in and adjacent to the exercise area. The review concluded that NMFS does not expect the COMPTUEX and JTFEX exercises through January 23, 2009 to result in adverse population level effects for any of the marine mammal populations.

Nature and Scope of the Emergency: The use of MFA sonar is complex and requires constant training to achieve and maintain combat proficiency and effectiveness. MFA sonar is the Navy's best means of detecting potentially hostile diesel-electric submarines. The primary Strike Group targets of hostile submarines are the Navy's aircraft carriers, which typically carries over 5,300 personnel and the Amphibious Assault Ship carry the Marine Expeditionary Unit. Thus, the inability to train effectively with MFA sonar literally puts the lives of thousands of Americans at risk. If a Strike Group does not gain proficiency in MFA sonar, and cannot be certified as combat ready, the national security implications would be enormous. This harm compounds quickly if additional Strike Groups cannot be certified.

On August 7, 2007, the U.S. District Court for the Central District of California in *Natural Resources Defense Council* v. *Winter* (CV 07–335) issued an order enjoining all MFA sonar use during the Navy's remaining SOCAL Operating Area COMPTUEXs and JTFEXs scheduled to occur through January 2009. This order was stayed by an emergency panel of the Ninth Circuit Court of Appeals on August 31, 2007, pending full hearing of the Navy's appeal of the injunction. On November 13, 2007, a different panel of the Ninth Circuit ruled on the appeal, finding that the District Court had abused its discretion, leaving the stay in place long enough for the Navy to complete an ongoing exercise, and then reinstating the August 7 injunction until the District Court issued a new, tailored injunction ''under which the Navy may conduct its training exercises.'' The panel set a deadline of January 4, 2008, for the District Court to issue the tailored injunction.

On January 3, 2008, the District Court issued a new preliminary injunction that bars any training with MFA sonar within 12 nautical miles of the California coastline or anywhere in the Santa Catalina basin, except that Navy can use MFA sonar in the San Clemente Island Range Complex if the location is at least 5 nautical miles from the western shore of San Clemente Island. The new injunction also imposed a 2,200 yard (2,000 meter) sonar shutdown zone for ships, sonobuoys, and helicopters; 6 decibel (dB) power down when surface ducting conditions are detected regardless of the presence of marine mammals; 60 minutes of monitoring each day before use of MFA sonar; two dedicated (no other duties) NOAA- and NMFS-trained lookouts during MFA sonar use; use of passive acoustic monitoring to the maximum extent practicable; and aerial monitoring 60 minutes before and during MFA sonar exercises. The aerial monitoring included at least one dedicated aircraft. Helicopters must monitor for marine mammals for 10 minutes before use of dipping sonar. Finally, Navy must continue to comply with all 29 mitigation measures required by the NDE under the MMPA issued on January 23, 2007, unless superseded by one or more of the restrictions imposed by the court.

On January 10, 2008, the District Court modified the new injunction to ''correct clerical errors and omissions.'' The court ordered that (1) the 2,200 yard shutdown zone does not apply to dolphins or porpoises that are ''bow riding''; (2) dedicated monitoring aircraft are no longer required during the entire exercise (Navy aircraft engaged in the exercise are now sufficient); and (3) the requirement to reduce power by 6 dB when surface ducting conditions are present only apply when ''significant'' surface ducting conditions are present. These changes left the 2,200 yard shutdown requirement in place.

Accounting for the court's recent changes to the new injunction made on January 10, 2008, the order's training restrictions, in particular the unaltered 2,200 yard shut down requirement and 6 dB power down when significant surface ducting conditions are present, create a significant and unreasonable risk that Strike Groups will not be able to train effectively and certify as fully mission capable. The COMPTUEXs and JTFEXs scheduled to occur in the SOCAL operating area this month through January 2009 enable critical training. Effective MFA sonar training is necessary to certify Strike Groups for deployment in support of world-wide operational and combat activities.

While the Navy continues to prepare the SOCAL EIS that will analyze potential effects to marine mammals from exposure to MFA sonar, including use during COMPTUEXs and JTFEXs, it cannot delay this critical training and subsequent certification. The inability to conduct effective MFA sonar training and certify Strike Groups constitutes an emergency with significant consequences to the national security of the United States. Therefore, based upon the court's preliminary determination as to the need for the Navy to prepare an EIS that analyzes MFA sonar exposure effects during these exercises, per the provisions of 40 CFR 1506.11, the Navy initiated consultation with CEQ and requested alternative arrangements.

The Navy's request that CEQ provide for alternative arrangements for NEPA compliance was limited to the Navy's proposed use of MFA sonar during Commander THIRD Fleet's nine (9) training exercises, 4 COMPTUEXs and 5 JTFEXs, in the SOCAL Operating Area. The Navy affirmed that any alternative arrangements would remain in effect during the preparation and completion of the SOCAL EIS or until January 23, 2009, whichever is earlier. Applying these alternative arrangements to any other area or exercise would not be appropriate absent an analysis tailored to such other area and exercise.

Alternative Arrangements

The Navy accepts the alternative arrangements prescribed by CEQ for the remaining MFA sonar training exercises in the SOCAL Operating Area between today and January 23, 2009.

Mitigation Measures: The Navy will adhere to 29 mitigation measures developed in cooperation with NMFS. These mitigation measures were developed and included as an integral part of the NDE under the MMPA invoked by the Deputy Secretary of Defense under Title 16, Section 1371(f) of the U.S. Code on January 23, 2007. That exemption applies to all Department of Defense (DoD) military readiness activities employing MFA sonar during major exercises or within established DoD maritime ranges or established operating areas through January 23, 2009.

The Navy's proposed use of MFA sonar during the Commander THIRD

Fleet's proposed nine training exercises (four COMPTUEXs and five JTFEXs), in the SOCAL Operating Area is based on the current knowledge of the SOCAL Operating Area and the 29 NDE mitigation measures, some of which are more fully described below:

The Navy will continue to ensure that watchstanders and lookouts will include at a minimum: (1) Three non-dedicated watchstanders on all surface ships required to look out for marine mammals during all exercises; and (2) two lookouts on all surface ships required to look out for marine mammals during all exercises. Furthermore, all sightings of marine mammals by all watchstanders and all lookouts will be reported directly to the Combat Information Center (CIC) or via the appropriate watch stations for submission to the CIC, and the CIC will disseminate the sighting information to all platforms in the area with a recommendation for appropriate action (e.g., power down sonar; surface or subsurface vessels to avoid area or increase distance from mammals; aerial platforms to increase vigilance). Similarly, all aerial platforms will monitor the area for marine mammals during their assigned missions and report marine mammal presence and confirmed sightings to Aircraft Control Unit for submission to the CIC, and the CIC will disseminate the sighting information to all platforms in the area to ensure they are aware of the presence of marine mammals and can take steps to increase vigilance or execute mitigation measures applicable to these exercises (e.g., power down sonar; surface or subsurface vessels to avoid area or increase distance from mammals; aerial platforms to increase vigilance).

The Navy will continue to submit after action reports (AARs) to NMFS 120 days after the conclusion of any COMPTUEX or JTFEX that contain: (1) An assessment of the mitigation and monitoring measures and how to improve them; and (2) the results of marine mammal monitoring, including all instances where marine mammals were observed and the levels of MFA sonar to which they were exposed, based on the NDE sonar mitigation measures and the requirements of the Biological Opinion dated February 9, 2007.

Use of MFA sonar in the SOCAL Operating Area for COMPTUEX and JTFEX training will occur in W–291 and SOAR. The training exercises in SOAR will occur at least 5 nautical miles away from the western shoreline of San Clemente Island. Aside from San Clemente Island, there are no other islands located within W–291 or SOAR. The Channel Islands National Marine Sanctuary is located entirely outside of W–291 and SOAR.

The Navy will use meters rather than yards to describe the safety zone set forth in NDE mitigation measure 20, and the safety zone used in the SOCAL Operating Area will be 1000 meters. The Navy will power down 6dB if a marine mammal is detected within the safety zone. The Navy will power down an additional 4 dB at 500 meters and will shut off sonar transmissions at 200 meters. The remaining features of the safety zone described in NDE measure 20 will remain the same.

Public Participation: The Navy will ensure active public participation during the development of the SOCAL EIS and all other range EISs underway and scheduled for completion in 2008 that analyze MFA sonar effects. For the SOCAL EIS, the Navy will release the draft EIS (DEIS) for public review in early April 2008 with a public comment period of 45 days that will span the month of April and extend to mid-May. In addition to publication of the Notice of Availability by the Environmental Protection Agency (EPA) in the **Federal Register**, the Navy will publish a Notice of Availability in three local California newspapers: San Diego Union Tribune, North County Times (San Diego County), and The Press-Telegram (Long Beach).

The Navy will mail a postcard to all those who attended scoping meetings and those who submitted comments or requested copies of the DEIS. The postcard will announce availability of the DEIS and provide information on how and where to obtain copies. Three public hearings will be held in or near the following California communities: Coronado, Oceanside, and Long Beach. The locations of the meetings will be publicly announced in the **Federal Register**, the California newspapers San Diego Union Tribune, North County Times (San Diego County), and The Press-Telegram (Long Beach) and posted on the Web site *http://www.socalrangecomplexeis.com* at least 15 days beforehand.

Copies of the DEIS will also be available at four libraries in Southern California—the San Diego Central Library, the Coronado Public Library, the San Clemente Library, and the San Pedro Regional Branch Library—and at *http://www.socalrangecomplexeis.com*. The DEIS will be accompanied by fact sheets (presently under development) that will address the proposed action (including the use of MFA sonar during these exercises), marine mammals in the Range Complex, and major events (including these major exercises). These fact sheets will track with facts made available during the public scoping process. The DEIS will be distributed to federal, state, and local elected and tribal officials and government and tribal agencies, non-governmental organizations (NGOs), and citizens, many of whom participated in the scoping process. NGOs on the distribution list include those known to have an interest in the ocean, ocean resources, or use of sonar and its effects on marine animals, including recreationists, sport and commercial fishing groups, environmental interest organizations, chambers of commerce, business entities, museums, and universities. In addition, prior to the public hearings, Navy will offer elected officials and agencies the opportunity to participate in briefings on the content and conclusions of the DEIS.

The Navy will provide notice of these alternative arrangements and publish this Decision Memorandum in the **Federal Register**. In addition, Navy will publish notice of these alternative arrangements in the following newspapers: (1) Los Angeles Times; (2) Sacramento Bee; (3) San Diego Union-Tribune; (4) North County Times (San Diego County); and (5) Daily Breeze (San Pedro, California).

Concurrent with the **Federal Register** notice, the Navy will include notices to the parties identified in its request to CEQ of January 10, 2008, as well as World Wildlife Fund, Nature Conservancy, National Wildlife Federation, Whale and Dolphin Conservation Society, Ocean Mammal Institute, Center for Whale Research, Consortium for Oceanographic Research and Education, National Fisheries Institute, American Sportfishing Association, Coastal Conservation Association, International Fund for Animal Welfare, American Tunaboat Association, Pacific Fisheries Management Council, Western Fish Boat Owners Association, Southern California Lobster and Trap Fisherman's Association, Southern California Trawler's Association, Morro Bay Commercial Fisherman Organization, Southern California Commercial Fishing Association, California Wetfish Producers Association, United Anglers of Southern California, Tuna Club of Santa Catalina Island, International Game Fish Association, Long Beach Sportfishing, Recreational Fishing Alliance, United Anglers of Southern California, United Pier & Shore Anglers of California, Scripps Research Institute, University of California at Santa Cruz, and the Applied Physics Laboratory—University of Washington.

The notices will specifically seek input on the process for reviewing post-exercise assessments and include an offer to meet jointly with Navy representatives from the office of the Assistant Secretary of the Navy (Installations & Environment) and the office of the Chief of Naval Operations, and CEQ to discuss the alternative arrangements.

CEQ will be provided copies of any notices made in accordance with the alternative arrangements and the notices will be posted on the Web site at *http://www.socalrangecomplexeis.com*.

The Navy will also provide CEQ notice of the post-exercise assessments which the Navy prepares for each exercise within 120 days of completion of each exercise (or 120 days after completion of an exercise which is reported as part of a group of exercises) to which these alternative arrangements apply. Further dissemination of the post-exercise assessments will be determined after considering input received in response to the Navy notice of alternative arrangements, and the further dissemination of the post-exercise assessments will be incorporated into the alternative arrangements.

After the conclusion of the alternative arrangements, and no later than March 23, 2009, the Navy will provide a report to CEQ on the use of the alternative arrangements that reviews the value and effectiveness of those arrangements. Notice of the report will be provided in the **Federal Register**, the five newspapers (Los Angeles Times; Sacramento Bee; San Diego Union-Tribune; North County Times (San Diego County); and Daily Breeze (San Pedro, California)) and on the Web site at *http://www.socalrangecomplexeis.com*.

Adaptive Management: Under the NDE, the Navy will continue to submit to NMFS's Office of Protected Resources (OPR) a report, within 120 days of the completion of major exercises, containing a discussion of the nature of effects on marine mammals from exposure to MFA sonar, if observed, based upon both modeled results of real-time events and sightings of marine mammals.

The Navy also consulted under the ESA with NMFS regarding the effects of its sonar activities for these exercises on listed species. NMFS issued a Biological Opinion finding that the Navy's actions were not likely to result in jeopardy to any listed species nor adversely modify any designated critical habitat. The Navy will continue to adhere to monitoring and reporting requirements specified in the Biological Opinion.

The Navy will continue to meet the requirements set out in the NDE for AARs. To accelerate and improve the information on marine mammal exposure effects or lack of effects, the Navy will modify its reporting and recordation processes to enable a more comprehensive analysis of impacts to marine mammals (including beaked whales that are not listed under the ESA) and ASW training during these major exercises and integrate these modifications into the reports prepared on the exercises conducted between March 1, 2008, and January 23, 2009. The reporting and monitoring program improvements identified using adaptive management principles will also inform the EIS process for the SOCAL Range Complex.

Research Measures: Efforts to obtain more information about the quantity, distribution, migration, and reactions of marine mammals to MFA sonar is ongoing and will continue. Consequently, information being obtained will inform compliance with the substantive provisions of the MMPA and ESA, and the procedural requirements of CZMA and NEPA. For NEPA, this information will inform the ongoing SOCAL EIS process as well as future exercise planning in the SOCAL Operating Area and serve to provide the basis for integrated compliance with all environmental statutes.

The Navy will continue to implement the following research measures to provide for continual improvement in the quality of information available:

The Navy will continue to improve information regarding marine mammal presence and density in the SOCAL Operating Area by coordinating with NMFS to determine the need to identify areas within the SOCAL Operating Area for additional marine mammal surveys. If a need is identified, an implementation plan identifying the areas and providing a schedule for the surveys will be developed no later than July 2008. The surveys will be designed to help determine where and when there are concentrations of marine mammals in the SOCAL Operating Area. The survey will occur over a two-year period through July 2010.

The Navy will continue to work on a program that will enhance its ability to use passive hydrophones on the SOAR Instrumented Range to detect and track marine mammals on those portions of the range where the passive hydrophones are in place. To ensure that these efforts remain focused, the Navy will develop an implementation plan and schedule to expand the technical capability of existing hydrophones to detect marine mammals by April 4, 2008. The implementation plan should provide for completion of prototype classifiers for Cuvier's and Blainesville's beaked whales and visual verification of other small odontocetes detected by passive hydrophones by April 15, 2009.

As part of the SOCAL EIS, the Navy is evaluating a proposal to extend the range areas monitored by passive hydrophones. If Navy decides to extend the area covered by passive hydrophones as part of its ROD for the SOCAL EIS, the Navy will determine a timetable for acquisition and installation of additional hydrophones by March 30, 2009.

The Navy is evaluating current research regarding infrared (IR) technology for use in collecting data regarding marine mammals, assessing the feasibility of acquiring and deploying additional IR capabilities during major exercises or for conducting surveys, and developing a plan for acquiring and deploying IR in data collection efforts. The plan will be published no later than June 15, 2008.

Dated: January 15, 2008.

Donald C. Winter,

Secretary of the Navy.

[FR Doc. E8–1175 Filed 1–23–08; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

[USN–2008–0002]

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice To Amend a System of Records.

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

DATES: This proposed action will be effective without further notice on February 25, 2008 unless comments are received which result in a contrary determination.

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

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy systems of records notices subject to the Privacy

Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: January 17, 2008.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

NM05000–2

SYSTEM NAME:

Organization Management and Locator System.

CHANGES:

SYSTEM NAME:

Delete ''Organization'' and replace with ''Program''.

SYSTEM LOCATION:

At end of para 1, add ''Some records may be located at contractor-operated facilities.''

SAFEGUARDS:

At end of paragraph add ''For contractor-operated facilities, client data is kept in a certified data facility. At no time is client data removed from the secure hosting environment and access to client data is only to those employees with a direct functional need. Password complexity, expiration, minimum length, and history will assist in assuring only appropriate personnel have access to client data.''

NM05000–2

SYSTEM NAME:

Program Management and Locator System.

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://doni.daps.dla.mil/sndl.aspx.* Some records may be located at contractor-operated facilities.

Commander, U.S. Joint Forces Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488.

Commander, U.S. Pacific Command, P.O. Box 64028, Camp H.M. Smith, HI 96861–4028.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military, civilian, and contractor personnel attached to the activity; former members; applicants for civilian employment, visitors, volunteers, guests, and invitees; and dependent family members.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records, correspondence, and databases needed to manage personnel, projects, and access to programs. Information consists of name; Social Security Number; date of birth; photo identification; grade and series or rank/rate; biographical data; security clearance; education; experience characteristics and training histories; qualifications; Common Access Card (CAC) issuance and expiration; food service meal entitlement code; trade; hire/termination dates; type of appointment; leave; location; assigned organization code and/or work center code; Military Occupational Series (MOS); labor code; payments for training, travel advances and claims; hours assigned and worked; routine and emergency assignments; functional responsibilities; access to secure spaces and issuance of keys; travel; retention group; vehicle parking; disaster control; community relations (blood donor, etc); employee recreation programs; retirement category; awards; property custody; personnel actions/dates; violations of rules; physical handicaps and health/safety data; veterans preference; postal address; location of dependents and next of kin and their addresses; computer use responsibility agreements; and other data needed for personnel, financial, line, safety and security management, as appropriate.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 5041, Headquarters, Marine Corps; and E.O. 9397 (SSN).

PURPOSE(S):

To manage, supervise, and administer programs for all Department of the Navy civilian, military, and contractor personnel. Information is used to prepare organizational locator, recall rosters, and social rosters; notify personnel of arrival of visitors; locate individuals on routine and/or emergency matters; locate individuals during medical emergencies, facility evacuations and similar threat situations; provide mail distribution and forwarding addresses; compile a social roster for official and non-official functions; send personal greetings and invitations; track attendance at training; identify routine and special work assignments; determine clearance for access control; identify record handlers of hazardous materials; record rental of welfare and recreational equipment; track beneficial suggestions and awards; control the budget; travel claims; track manpower, grades, and personnel actions; maintain statistics for minorities; track employment; track labor costing; prepare watch bills; project retirement losses; verify employment to requesting banking activities; rental and credit organizations; name change location; checklist prior to leaving activity; safety reporting/monitoring; and, similar administrative uses requiring personnel data.

To arbitrators and hearing examiners for use in civilian personnel matters relating to civilian grievances and appeals.

To authenticate authorization for access to services and spaces such as Morale, Welfare, and Recreation (MWR) facilities and food services.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

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

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

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

STORAGE:

Electronic databases and paper records.

RETRIEVABILITY:

Name, Social Security Number, employee badge number, case number, organization, work center and/or job order, and supervisor's shop and code.

SAFEGUARDS:

Password controlled system, file, and element access based on predefined need-to-know. Physical access to terminals, terminal rooms, buildings and activities' grounds are controlled by locked terminals and rooms, guards, personnel screening and visitor registers. For contractor operated facilities, client data is kept in a certified data facility. At no time is client data removed from the secure hosting environment and access to client data is only to those employees with a direct functional need. Password

complexity, expiration, minimum length, and history will assist in assuring only appropriate personnel have access to client data.

RETENTION AND DISPOSAL:

Destroy when no longer needed or after two years, whichever is later.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding officer of the activity in question. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://doni.daps.dla.mil/sndl.aspx*.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the commanding officer of the activity in question. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://doni.daps.dla.mil/sndl.aspx*.

The request should include full name, Social Security Number, and address of the individual concerned and should be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the commanding officer of the activity in question. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://doni.daps.dla.mil/sndl.aspx*.

The request should include full name, Social Security Number, and address of the individual concerned and should be signed.

CONTESTING RECORD PROCEDURES:

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

RECORD SOURCE CATEGORIES:

Individual; Defense Manpower Data Center; employment papers; records of the organization; official personnel jackets; supervisors; official travel orders; educational institutions; applications; duty officer; investigations; OPM officials; and/or members of the American Red Cross.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E8–1190 Filed 1–23–08; 8:45 am]

BILLING CODE 5001–06–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 25, 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 17, 2008.

Angela C. Arrington,

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

Office of Postsecondary Education

Type of Review: Reinstatement.

Title: Application for Grants under the Training Program for Federal TRIO Programs.

Frequency: Biennially.

Affected Public: Not-for-profit institutions; State, Local, or Tribal Gov't; SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 60.

Burden Hours: 1,020.

Abstract: The Training Program for Federal TRIO Programs is mandated, by statute, to provide training for staff and leadership personnel employed or preparing for employment in TRIO Program projects designed to identify individuals from disadvantaged backgrounds, prepare them for a program of postsecondary education, and provide special services for such students pursuing programs of postsecondary education.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

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 3564. 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. E8–1124 Filed 1–23–08; 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 24, 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 16, 2008.

Angela C. Arrington,

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

Department of Education

Type of Review: Extension.

Title: Generic Plan for Customer Satisfaction Surveys and Focus Groups.

Frequency: Annually Other: one time or annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 70,000.

Burden Hours: 25,000.

Abstract: Customer satisfaction surveys and focus group discussions will be conducted by the Principal Offices of the Department of Education to measure customer satisfaction and establish and improve customer service standards as required by Executive Order 12862.

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 3569. 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. E8–1128 Filed 1–23–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Safe and Drug-Free Schools; Overview Information; Safe Schools/Healthy Students Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2008

Catalog of Federal Domestic Assistance (CFDA) Number: 84.184L.

DATES:

Applications Available: January 24, 2008.

Deadline for Transmittal of Applications: March 14, 2008.

Deadline for Intergovernmental Review: May 13, 2008.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Safe Schools/Healthy Students program (SS/HS) supports the implementation and enhancement of integrated, comprehensive community-wide plans that create safe and drug-free schools and promote healthy childhood development.

Priorities: These priorities are from the notice of final priorities, requirements, selection criteria, and definitions for this program, published in the **Federal Register** on May 10, 2007 (72 FR 26692).

Note: Definitions for important terms associated with this competition (e.g., authorized representative, local juvenile justice agency) can be found in the notice of final priorities, requirements, selection criteria, and definitions published in the **Federal Register** on May 10, 2007 (72 FR 26692).

Absolute Priority: For FY 2008 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

Comprehensive Plan.

This priority supports projects of local educational agencies (LEAs) proposing to implement an integrated, comprehensive community-wide plan designed to create safe, respectful, and drug-free school environments and promote prosocial skills and healthy childhood development. Plans must focus activities, curricula, programs, and services in a manner that responds to the community's existing needs, gaps, or weaknesses in areas related to the five comprehensive plan elements:

Element One—Safe School Environments and Violence Prevention Activities.

Element Two—Alcohol, Tobacco, and Other Drug Prevention Activities.

Element Three—Student Behavioral, Social, and Emotional Supports.

Element Four—Mental Health Services.

Element Five—Early Childhood Social and Emotional Learning Programs.

Competitive Preference Priority: For FY 2008 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is a

competitive preference priority. Under 34 CFR 75.105(c)(2)(i) we award an additional 5 points to an application that meets this priority.

This priority is:

LEAs That Have Not Previously Received a Grant or Services Under the Safe Schools/Healthy Students Initiative.

Under this priority, we give priority to applications from LEAs that have not yet received a grant under this program as an applicant or as a member of a consortium. In order for a consortium application to be eligible under this priority, no member of the LEA consortium may have received a grant or services under this program as an applicant or as a member of a consortium applicant.

Application and Eligibility Requirements. The applicant must meet the following requirements:

(1) *Program-Specific Assurances for Former SS/HS Grant Recipients.* For those LEAs that have previously received funds or services (or for those LEA consortia that include a member LEA that has received funds or services) under the SS/HS program, a program-specific assurance must be submitted as part of the SS/HS application. All participating LEAs in a proposed consortium project must sign this program-specific assurance. The assurance must state that, if awarded, the project will not serve those schools or sub-regions served by the first SS/HS project. Applications from prior SS/HS grant recipients (or from a consortium that includes an LEA that has previously received SS/HS funds or services) that do not include the program-specific assurance will be rejected and not considered for funding.

(2) *Funding Limits for Applicants.* An applicant's request for funding must not exceed the following maximum amounts, based on student enrollment data, for any of the project's four 12-month budget periods: $2,250,000 for an LEA with at least 35,000 students; $1,500,000 for an LEA with at least 5,000 students but fewer than 35,000 students; and $750,000 for an LEA with fewer than 5,000 students. In applying these maximums, applicants must use the most recent student enrollment data from the National Center for Education Statistics' (NCES) Common Core of Data (CCD) as posted on the NCES Web site. In the case of consortium applicants, the maximum funding request is based on the combined student enrollment data for the participating LEAs. Department of the Interior, Bureau of Indian Education-funded schools that are not included in the NCES database and request grant funds that exceed $750,000 for any of the project's four 12-month budget periods must provide documentation of enrollment data.

(3) *Preliminary Memorandum of Agreement (MOA).* Each applicant must include in its application a preliminary MOA that is signed by the authorized representatives of the LEA, the local juvenile justice agency, the local law enforcement agency, and the local public mental health authority—the required SS/HS partners. For consortium applicants, the preliminary MOA must be signed by the authorized representatives of each member LEA and by the authorized representatives of each corresponding required SS/HS partner for each member LEA. Additionally, the preliminary MOA must:

(a) Include information that supports the selection of each identified SS/HS required partner that has signed the preliminary MOA;

(b) Demonstrate the support and commitment of the required SS/HS partners to implement and sustain the project if funded;

(c) Name a core management team of senior representatives from the required partners, and clearly define how each member of the team will support the project director in the day-to-day management of the project;

(d) Describe how multiple and diverse sectors of the community, including parents and students, have been and will continue to be involved in the design, implementation, and continuous improvement of the project; and

(e) Include, as an attachment, a logic model (a graphic representation of the project in chart format) that identifies needs or gaps and connects those needs or gaps with corresponding project goals, objectives, activities, partners' roles, outcomes, and outcome measures for each of the SS/HS elements.

Applications that do not include the preliminary MOA signed by the authorized representatives of each of the required SS/HS partners (the LEA, the local juvenile justice agency, the local law enforcement agency, and the local public mental health authority) and the logic model will be rejected and not considered for funding.

(4) *Final MOA.* If funded, grant recipients must complete a final MOA. The final MOA must be signed by the authorized representatives of the LEA, the local juvenile justice agency, the local law enforcement agency, and the local public mental health authority—the required SS/HS partners. For consortium applicants, the final MOA must be signed by the authorized representative for each member LEA and the authorized representative for each of the corresponding required SS/HS partners for each member LEA. The final MOA must also include the following:

(a) Information that supports the selection of each identified SS/HS required partner that has signed the final MOA;

(b) Any needed revisions to the statement of support and commitment for each of the required SS/HS partners to implement and sustain the project;

(c) A final roster of the core management team of senior representatives from the required SS/HS partners that clearly defines how each member of the team will support the project director in the day-to-day management of the project;

(d) Any needed revisions to the process for involving multiple and diverse sectors of the community in the implementation and continuous improvement of the project;

(e) A final logic model that identifies needs or gaps and connects those needs or gaps with corresponding project goals, objectives, activities, partners' roles, outcomes, and outcome measures for each of the SS/HS elements;

(f) A description of each partner's financial responsibility for the services that it will provide, along with the conditions and terms of responsibility for those services, including the quality, accountability, and coordination of services as they relate to achieving the goals, objectives, and outcomes of the project;

(g) A description of the procedures to be used for referral, treatment, and follow-up for children and adolescents in need of mental health services and an assurance that the local public mental health authority will provide administrative control and/or oversight of the delivery of mental health services; and

(h) Any other necessary revisions to information furnished in the preliminary MOA.

Program Authority: Safe and Drug-Free Schools and Communities Act (20 U.S.C. 7131); Public Health Service Act (42 U.S.C. 290aa); and Juvenile Justice and Delinquency Prevention Act (42 U.S.C. 5614(b)(4)(e) and 5781 *et seq.*).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 84, 85, 97, 98, 99, and 299. (b) The notice of final priorities, requirements, selection criteria, and definitions published in the **Federal Register** on May 10, 2007 (72 FR 26692). (c) The notice of final eligibility requirement published in the **Federal Register** on December 4, 2006 (71 FR 70369).

Note: The regulations in 34 part 79 apply to all applicants except federally recognized Indian tribes.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $72,000,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards later in FY 2008 and in FY 2009 from the list of unfunded applicants from this competition.

Estimated Range of Awards: Up to $750,000 for an LEA with fewer than 5,000 students; up to $1,500,000 for an LEA with at least 5,000 students but fewer than 35,000 students; and up to $2,250,000 for an LEA with at least 35,000 students.

Estimated Average Size of Awards: $750,000 for an LEA with fewer than 5,000 students; $1,500,000 for an LEA with at least 5,000 students but fewer than 35,000 students; and $2,250,000 for an LEA with at least 35,000 students.

Estimated Average Size of Awards: $750,000 for an LEA with fewer than 5,000 students; $1,500,000 for an LEA with at least 5,000 students but fewer than 35,000 students; and $2,250,000 for an LEA with at least 35,000 students.

Estimated Number of Awards: 55.

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

Project Period: Up to 48 months.

III. Eligibility Information

1. *Eligible Applicants:* LEAs, including charter schools that are considered LEAs under State law, and consortia of LEAs.

Note: The Secretary limits eligibility under the SS/HS grant program competition (CFDA Number 84.184L) to applicants that do not currently have an active grant under this grant program. For the purpose of this eligibility requirement, a grant is considered active until the end of the grant's project or funding period, including any extensions of those periods that extend the grantee's authority to obligate funds. This eligibility requirement is from the notice of final eligibility requirement published in the **Federal Register** on December 4, 2006 (71 FR 70369).

2. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

3. *Other:* (a) Participation by Private School Children and Teachers. Section 9501 of the Elementary and Secondary Education Act of 1965, as amended (ESEA), requires that LEAs or other entities receiving funds under the Safe and Drug-Free Schools and Communities Act provide for the equitable participation of private school children, their teachers, and other educational personnel in private schools located in areas served by the grant recipient. In order to ensure that grant program activities, curricula, programs, and services address the needs of private school children, LEAs must engage in timely and meaningful consultation with private school officials during the design and development of the program. This consultation must take place before any decision is made that affects the opportunities of eligible private school children, teachers, and other educational personnel to participate.

Administrative direction and control over grant funds must remain with the grantee.

(b) *Maintenance of Effort.* Section 9521 of the ESEA provides that LEAs may receive a grant only if the State educational agency finds that either the combined fiscal effort per student or the aggregate expenditures of the LEA and the State with respect to the provision of free public education by the LEA for the preceding fiscal year was not less than 90 percent of the combined fiscal effort or aggregate expenditures for the second preceding fiscal year.

IV. Application and Submission Information

1. *Address To Request Application Package:* You can obtain an application package via the Internet, from the Education Publications Center (ED Pubs), or from the program office. To obtain a copy via the Internet, use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.html.*

To obtain a copy from ED Pubs, write, fax, or call the following: Education Publications Center, P.O. Box 1398, Jessup, MD 20794–1398. *Telephone, toll free:* 1–877–433–7827. *FAX:* (301) 470–1244. If you use a telecommunications device for the deaf (TDD), call, *toll free:* 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.ed.gov/pubs/edpubs.html* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.184L.

To obtain a copy from the program office, contact: Karen Dorsey, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E336, Washington, DC 20202–6450. *Telephone:* (202) 708–4674 or by *e-mail: karen.dorsey@ed.gov.*

If you use TDD, call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

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

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

Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative to the equivalent of no more than 40 pages, using the following standards:

- A page is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative. Titles, headings, footnotes, quotations, references, and captions, as well as text in charts, tables, figures, and graphs, can be single spaced.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.
- Number all pages consecutively using the style 1 of 40, 2 of 40, and so forth.
- Include a Table of Contents with page references. The 40-page limit does not apply to the Table of Contents.

Our reviewers will not read any pages of the narrative portion of your application that exceed the page limit if you apply these standards; or exceed the equivalent of the page limit if you apply other standards.

3. *Submission Dates and Times:*

Applications Available: January 24, 2008.

Deadline for Transmittal of Applications: March 14, 2008.

Applications for grants under this competition may be submitted electronically using the *Grants.gov* Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* in this notice.

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

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION**

CONTACT in section VII in this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: May 13, 2008.

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

5. *Funding Restrictions:*

(1) No less than seven percent of a grantee's budget for each year must be used to support costs associated with local evaluation activities.

(2) No more than 10 percent of the total budget for each project year may be used to support costs associated with security equipment, security personnel, and minor remodeling of school facilities to improve school safety.

(3) We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section in this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

To comply with the President's Management Agenda, we are participating as a partner in the Governmentwide *Grants.gov* Apply site. The Safe Schools/Healthy Students Program, CFDA Number 84.184L, is included in this project. We request your participation in *Grants.gov*.

If you choose to submit your application electronically, you must use the Governmentwide *Grants.gov* Apply site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for the Safe Schools/Healthy Students Program at *http://www.Grants.gov.* You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.184, not 84.184L).

Please note the following:

- Your participation in *Grants.gov* is voluntary.
- When you enter the *Grants.gov* site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by *Grants.gov* are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the *Grants.gov* system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date and time stamped by the *Grants.gov* system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from *Grants.gov*, we will notify you if we are rejecting your application because it was date and time stamped by the *Grants.gov* system after 4:30 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through *Grants.gov.*
- You should review and follow the Education Submission Procedures for submitting an application through *Grants.gov* that are included in the application package for this competition to ensure that you submit your application in a timely manner to the *Grants.gov* system. You can also find the Education Submission Procedures pertaining to *Grants.gov* at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*
- To submit your application via Grants.gov, you must complete all steps in the *Grants.gov* registration process (see *http://www.grants.gov/applicants/get_registered.jsp).*

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

- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.
- If you submit your application electronically, you must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—have replaced the ED 424 (Application for Federal Education Assistance).
- If you submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from *Grants.gov* an automatic notification of receipt that contains a *Grants.gov* tracking number. (This notification indicates receipt by *Grants.gov* only, not receipt by the Department.) The Department then will retrieve your application from *Grants.gov* and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues With the Grants.gov System: If you are experiencing problems submitting your application through *Grants.gov*, please contact the *Grants.gov* Support Desk, toll free, at 1–800–518–4726. You must

obtain a *Grants.gov* Support Desk Case Number and must keep a record of it.

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

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

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

b. *Submission of Paper Applications by Mail.* If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service:
U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.184L), 400 Maryland Avenue, SW., Washington, DC 20202–4260;
or
By mail through a commercial carrier:
U.S. Department of Education, Application Control Center, Stop 4260, *Attention:* (CFDA Number 84.184L), 7100 Old Landover Road, Landover, MD 20785–1506.

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

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

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

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

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

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

(1) A private metered postmark.

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

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

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

c. *Submission of Paper Applications by Hand Delivery.* If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.184L), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

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

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

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

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

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from the notice of final priorities, requirements, selection criteria, and definitions published in the **Federal Register** on May 10, 2007 (72 FR 26692) and are listed in the application package.

2. *Review and Selection Process:* Additional factors we consider in selecting an application for an award are as follows: (1) Geographic distribution; and (2) diversity of activities addressed by the projects.

VI. Award Administration Information

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

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

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

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

3. *Reporting:* Semi-annual and annual performance reports are required for each of the project's four 12-month performance periods in accordance with 34 CFR 75.720(c). At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html*.

4. *Performance Measures:* The Department has established the following Government Performance and Results Act of 1993 (GPRA) performance measures for the SS/HS program:

(1) Student Victimization/Perception of School Safety.

(a) Percentage of grantees that experience a decrease in students who did not go to school on 1 or more days during the past 30 days because they felt unsafe at school or on their way to and from school.

(b) Percentage of grantees that experience a decrease in students who have been in a physical fight on school property in the 12 months prior to the survey.

(2) Student Substance Use/Abuse.

(a) Percentage of grantees that report a decrease in students who report current (30-day) marijuana use.

(b) Percentage of grantees that report a decrease in students who report current (30-day) alcohol use.

(3) Mental Health Services Provided

(a) Percentage of grantees that report an increase in the number of students receiving school-based mental health services.

(b) Percentage of grantees that report an increase in the percentage of mental health referrals for students that result in mental health services being provided in the community.

These measures constitute the Department's indicators of success for this program. Consequently, we advise an applicant for a grant under this program to give careful consideration to these measures in conceptualizing the approach and evaluation for its proposed project. Each grantee will be required to provide, in its annual performance and final reports, data about its progress in meeting these measures.

VII. Agency Contacts

FOR FURTHER INFORMATION CONTACT: Karen Dorsey, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E336, Washington, DC 20202–6450. Telephone: (202) 708–4674 or by e-mail: *karen.dorsey@ed.gov.*

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Alternative Format: Individuals with disabilities can obtain this document and a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice.

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

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

You may also view this document in text or PDF at the following sites: *http://www.ed.gov/programs/dvpsafeschools/applicant.html, http://www.sshs.samhsa.gov.*

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

Dated: January 18, 2008.

Deborah A. Price,

Assistant Deputy Secretary for Safe and Drug-Free Schools.

[FR Doc. E8–1208 Filed 1–23–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

January 17, 2008.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP98–18–032.
Applicants: Iroquois Gas Transmission System, L.P.
Description: Iroquois Gas Transmission System submits First Revised Sheet 6L to FERC Gas Tariff Revised Volume 1.
Filed Date: 01/15/2008.
Accession Number: 20080116–0167.
Comment Date: 5 p.m. Eastern Time on Monday, January 28, 2008.

Docket Numbers: RP99–301–197.
Applicants: ANR Pipeline Company.
Description: ANR Pipeline Company submits an amendment to one NNS negotiated rate agreement between ANR and Wisconsin Gas LLC Contract 107995.
Filed Date: 01/15/2008.
Accession Number: 20080116–0171.
Comment Date: 5 p.m. Eastern Time on Monday, January 28, 2008.

Docket Numbers: RP99–301–198.
Applicants: ANR Pipeline Company.
Description: ANR Pipeline Company submits an amendment to one NNS negotiated rate agreement between ANR and Wisconsin Electric Power Company.
Filed Date: 01/15/2008.
Accession Number: 20080116–0170.
Comment Date: 5 p.m. Eastern Time on Monday, January 28, 2008.

Docket Numbers: RP03–36–029.
Applicants: Dauphin Island Gathering Partners.
Description: Dauphin Island Gathering Partners submits Thirty Fifth Revised Sheet No. 9 et al. to FERC Gas Tariff First Revised Volume 1.
Filed Date: 01/15/2008.
Accession Number: 20080116–0166.
Comment Date: 5 p.m. Eastern Time on Monday, January 28, 2008.

Docket Numbers: RP05–422–024.
Applicants: El Paso Natural Gas Company.
Description: El Paso Natural Gas Company submits Fourth Revised Sheet 150 et al. to FERC Gas Tariff, Second Revised Volume 1A under RP05–422.
Filed Date: 01/14/2008.
Accession Number: 20080116–0172.
Comment Date: 5 p.m. Eastern Time on Monday, January 28, 2008.

Docket Numbers: RP08–162–000.
Applicants: Gas Transmission Northwest Corporation.
Description: Gas Transmission Northwest Corporation submits acceptance of a refund report reflecting interruptible transportation revenue credits on GTN Coyote Spring Lateral for the period from 11/1/06 through 10/31/07 the Refund Year.
Filed Date: 01/15/2008.
Accession Number: 20080116–0169.
Comment Date: 5 p.m. Eastern Time on Monday, January 28, 2008.

Docket Numbers: RP08–163–000.
Applicants: Liberty Gas Storage, LLC.
Description: Liberty Gas Storage LLC submits First Revised Sheet 132 to FERC Gas Tariff Original Volume 1.
Filed Date: 01/15/2008.
Accession Number: 20080116–0168.
Comment Date: 5 p.m. Eastern Time on Monday, January 28, 2008.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling

link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed 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.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–1153 Filed 1–23–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

January 15, 2008.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC08–21–001.

Applicants: Northern Indiana Public Service Company.

Description: Supplement To The Application of Northern Indiana Public Service Company.

Filed Date: 01/09/2008.

Accession Number: 20080109–5154.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 22, 2008.

Docket Numbers: EC08–35–000.

Applicants: Aircraft Services Corporation; Smoky Hills Wind Farm, LLC.

Description: Smoky Hills Wind Farm, LLC submits an application seeking authorization for the acquisition by TexKan Wind of Smoky, LLC.

Filed Date: 01/08/2008.

Accession Number: 20080110–0026.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 29, 2008.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG08–30–000.

Applicants: Kelson Energy III LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Kelson Energy III LLC.

Filed Date: 01/14/2008.

Accession Number: 20080114–5083.

Comment Date: 5 p.m. Eastern Time on Monday, February 04, 2008.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER96–1361–012; ER98–4138–008; ER99–2781–010; ER98–3096–014; ER01–202–007; ER00–1770–016; ER02–453–009; ER04–472–006; ER07–903–001; ER05–1054–002.

Applicants: Atlantic City Electric Company; Potomac Electric Power Company; Delmarva Power & Light Company; Pepco Energy Services, Inc; Potomac Power Resources, LLC; Conectiv Energy Supply, Inc.; Conectiv Atlantic Generation, LLC; Conectiv Delmarva Generation LLC; Conectiv Bethlehem, LLC; Fauquier Landfill Gas, LLC; Bethlehem Renewable Energy, LLC; Eastern Landfill Gas, LLC

Description: Atlantic City Electric Co et al submit a Change of Status under FERC Order No. 652 & 18 CFR Section 35.27.

Filed Date: 01/10/2008.

Accession Number: 20080110–5086.

Comment Date: 5 p.m. Eastern Time on Thursday, January 31, 2008.

Docket Numbers: ER98–4159–010; ER04–268–007; ER06–398–004; ER06–399–004.

Applicants: Duquesne Light Company; Duquesne Power, L.P.; Duquesne Keystone, LLC; Duquesne Conemaugh, LLC.

Description: Notice of Affiliate Treatment for Purposes of Affiliate Restrictions in 18 CFR 35.39 of Duquesne Light Company, et al.

Filed Date: 01/09/2008.

Accession Number: 20080109–5111.

Comment Date: 5 p.m. Eastern Time on Wednesday, January 30, 2008.

Docket Numbers: ER99–1005–008.

Applicants: Kansas City Power & Light Company.

Description: Application to amend market-based rate tariff of Kansas City Power & Light Company.

Filed Date: 01/10/2008.

Accession Number: 20080114–0035.

Comment Date: 5 p.m. Eastern Time on Thursday, January 31, 2008.

Docket Numbers: ER05–1052–003.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool Inc submits its refund report demonstrating its compliance with the refund directives of the October 4 Order.

Filed Date: 12/31/2007.

Accession Number: 20080102–0248.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 22, 2008.

Docket Numbers: ER06–615–017; ER02–1656–035; ER07–1257–001; EL05–146–006; EL08–20–000.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corp submits their instant filing, in compliance with FERC's 12/20/07 Order.

Filed Date: 12/28/2007.

Accession Number: 20080110–0206.

Comment Date: 5 p.m. Eastern Time on Friday, January 18, 2008.

Docket Numbers: ER07–546–010.

Applicants: ISO New England, Inc.

Description: EnerNOC's Request for Expedited Consideration and Limited Waiver of Qualification Process Reimbursement Deposit Due Date under Market Rule 1.

Filed Date: 01/11/2008.

Accession Number: 20080111–5073.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 22, 2008.

Docket Numbers: ER07–1392–001.

Applicants: PacifiCorp.

Description: PacifiCorp submits First Revised Service Agreement 357 et al for Long-Term Firm Point-to-Point Transmission Service with PPM Energy Inc.

Filed Date: 01/09/2008.

Accession Number: 20080110–0109.

Comment Date: 5 p.m. Eastern Time on Wednesday, January 30, 2008.

Docket Numbers: ER08–40–002

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, LLC responds to FERC's 12/10/07 deficiency letter re an executed interconnection service agreement with Conectiv Delmarva Generation et al.

Filed Date: 01/09/2008.

Accession Number: 20080110–0111.

Comment Date: 5 p.m. Eastern Time on Wednesday, January 30, 2008.

Docket Numbers: ER08–92–001.

Applicants: Virginia Electric and Power Company.

Description: Virginia Electric and Power Company dba Dominion Virginia Power submits its Responses to FERC Staff's 12/19/07 Deficiency Letter and on 1/11/08 submit an errata to this filing.

Filed Date: 01/10/2008; 01/11/08.

Accession Number: 20080114–0034.

Comment Date: 5 p.m. Eastern Time on Thursday, January 31, 2008.

Docket Numbers: ER08–129–001.

Applicants: Southern Operating Companies.

Description: Southern Company Services Inc agent for Alabama Power Co et al submits a form of notice of amendment in accordance with the questions posed by FERC.

Filed Date: 01/10/2008.
Accession Number: 20080114–0033.
Comment Date: 5 p.m. Eastern Time on Thursday, January 31, 2008.

Docket Numbers: ER08–212–001.
Applicants: NSTAR Electric Company.
Description: NSTAR Electric Company submits an executed Amendment 1 to the Interconnection Agreement, designated as Rate Schedule FERC 230, to become effective 1/13/08.
Filed Date: 01/09/2008.
Accession Number: 20080110–0008.
Comment Date: 5 p.m. Eastern Time on Wednesday, January 30, 2008.

Docket Numbers: ER08–314–001.
Applicants: Bicent (California) Malburg LLC.
Description: Bicent (California) Malburg LLC submits its 12/7/07 application for market-based rate authority etc.
Filed Date: 01/09/2008.
Accession Number: 20080110–0108.
Comment Date: 5 p.m. Eastern Time on Tuesday, January 22, 2008.

Docket Numbers: ER08–351–000.
Applicants: Edison Sault Electric Company.
Description: Edison Sault Electric Co submits Supplemental Agreement 10 to the contract with Clover land Electric Cooperative, Inc.
Filed Date: 12/19/2007.
Accession Number: 20071221–0158.
Comment Date: 5 p.m. Eastern Time on Wednesday, January 09, 2008.

Docket Numbers: ER08–428–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits the Amended and Restated Cactus Avenue Wholesale Distribution Load Interconnection Facilities Agreement 100 with the City of Moreno Valley.
Filed Date: 01/08/2008.
Accession Number: 20080110–0007.
Comment Date: 5 p.m. Eastern Time on Tuesday, January 29, 2008.

Docket Numbers: ER08–429–000.
Applicants: Midwest Independent Transmission System Operator Inc.
Description: Midwest Independent Transmission System Op Inc. submits amended & restated large generator interconnection agreement, First Revised Service Agreement 1849 under its FERC Electric Tariff, Third Revised Volume 1.
Filed Date: 01/09/2008.
Accession Number: 20080110–0011.
Comment Date: 5 p.m. Eastern Time on Wednesday, January 30, 2008.

Docket Numbers: ER08–430–000.
Applicants: Public Service Company of New Mexico.
Description: Public Service Company of New Mexico submits an executed long-term firm point-to-point transmission service agreement with Aragone Wind LLC.
Filed Date: 01/09/2008.
Accession Number: 20080110–0009.
Comment Date: 5 p.m. Eastern Time on Wednesday, January 30, 2008.

Docket Numbers: ER08–431–000.
Applicants: American Electric Power Service Corporation.
Description: AEP Operating Companies submits fifth revision to the Interconnection and Local Delivery Agreement with the Blue Ridge Power Authority.
Filed Date: 01/09/2008.
Accession Number: 20080110–0010.
Comment Date: 5 p.m. Eastern Time on Wednesday, January 30, 2008.

Docket Numbers: ER08–432–000.
Applicants: Kentucky Power Company.
Description: Kentucky Power Company submits its Revised Sheet 10 et al to its FERC Electric Tariff 52.
Filed Date: 01/10/2008.
Accession Number: 20080114–0037.
Comment Date: 5 p.m. Eastern Time on Thursday, January 31, 2008.

Docket Numbers: ER08–433–000.
Applicants: Midwest Independent Transmission System.
Description: Midwest Independent Transmission System Operator Inc submits its Transmission to Transmission Interconnection Agreement among Hossier Energy Rural Electric Cooperative Inc *et al.*
Filed Date: 01/10/2008.
Accession Number: 20080114–0036.
Comment Date: 5 p.m. Eastern Time on Thursday, January 31, 2008.

Docket Numbers: ER08–434–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits a revised rate sheet to the Amended and Restated Huntington Beach Generating Station Radial Lines Agreement with AES Huntington Beach LLC.
Filed Date: 01/11/2008.
Accession Number: 20080114–0032.
Comment Date: 5 p.m. Eastern Time on Friday, February 01, 2008.

Docket Numbers: ER08–435–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator Inc submits proposed revisions to its Open Access Transmission and Energy Markets Tariff.
Filed Date: 01/11/2008.
Accession Number: 20080114–0031.
Comment Date: 5 p.m. Eastern Time on Friday, February 01, 2008.

Docket Numbers: ER08–436–000.
Applicants: Mirant Power Purchase, LLC.
Description: Mirant Power Purchase, LLC submits a notice of cancellation of FERC Electric Tariff, Original Volume 1, effective 3/9/06.
Filed Date: 01/11/2008.
Accession Number: 20080114–0408.
Comment Date: 5 p.m. Eastern Time on Friday, February 01, 2008.

Docket Numbers: ER08–437–000.
Applicants: Mountainview Power Company LLC.
Description: Mountainview Power Company, LLC submits support for an updated cost of capital for use in billings under the Power Purchase Agreement with Southern California Edison Co, effective 1/1/08.
Filed Date: 01/11/2008.
Accession Number: 20080114–0418.
Comment Date: 5 p.m. Eastern Time on Friday, February 01, 2008.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES08–24–000.
Applicants: Startrans IO, L.L.C.
Description: Startrans IO, LLC's Application Under Section 204 of the Federal Power Act For Authority To Issue Securities and Request for Expedited Consideration.
Filed Date: 01/11/2008.
Accession Number: 20080111–5052.
Comment Date: 5 p.m. Eastern Time on Friday, February 01, 2008.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be

listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–1154 Filed 1–23–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER08–14–000; ER08–14–001; ER08–14–002]

Alpha Domestic Power Trading, LLC; Notice of Issuance of Order

January 16, 2008.

Alpha Domestic Power Trading, LLC (Alpha Domestic) filed an application for market-based rate authority, with accompanying tariff. The proposed market-based rate tariff provides for the sale of energy and capacity at market-based rates. Alpha Domestic also requested waivers of various Commission regulations. In particular, Alpha Domestic requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Alpha Domestic.

On January 16, 2008, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under Part 34 (Director's Order). The Director's Order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard concerning the blanket approvals of issuances of securities or assumptions of liability by Alpha Domestic, should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2007).

Notice is hereby given that the deadline for filing protests is February 15, 2008.

Absent a request to be heard in opposition to such blanket approvals by the deadline above, Alpha Domestic is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Alpha Domestic, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Alpha Domestic's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov,* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a) (1) (iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–1150 Filed 1–23–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL08–34–000]

Maryland Public Service Commission, Complainant, v. PJM interconnection, L.L.C., Respondent; Notice of Complaint

January 16, 2008.

Take notice that on January 15, 2008, the Maryland Public Service Commission filed a formal complaint against PJM Interconnection, L. L. C. (PJM) pursuant to sections 206, 306 and 309 of the Federal Power Act, 16 U.S.C. 824e, 825e, 825h (2000 & Supp. V 2005), and Rule 206 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 385.206 (2007), to modify PJM's market rules that exempt certain generating resources from mitigation when the market is structurally noncompetitive.

The Maryland Public Service Commission certifies that copies of the complaint were served on the contacts for PJM as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC

Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on February 4, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–1149 Filed 1–23–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER08–275–000, ER08–275–001]

Santa Maria Cogen, Inc.; Notice of Issuance of Order

January 16, 2008.

Santa Maria Cogen, Inc. (Santa Maria), filed an application for market-based rate authority, with accompanying tariff. The proposed market-based rate tariff provides for the sale of energy, capacity and ancillary services at market-based rates. Santa Maria also requested waivers of various Commission regulations. In particular, Santa Maria requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Santa Maria.

On January 16, 2008, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under Part 34 (Director's Order). The Director's Order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard concerning the blanket approvals of issuances of securities or assumptions of liability by Santa Maria, should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2007). The Commission encourages the electronic submissions of protests using the FERC Online link at *http://www.ferc.gov*.

Notice is hereby given that the deadline for filing protests is February 15, 2008.

Absent a request to be heard in opposition to such blanket approvals by the deadline above, Santa Maria is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Santa Maria, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Santa Maria's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a) (1) (iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–1148 Filed 1–23–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08–50–000]

Trunkline Gas Company, LLC; Errata Notice

January 16, 2008.

On January 14, 2008, the Commission issued a ''Notice of Request Under Blanket Authorization (Notice) in the above docketed proceeding. That Notice is corrected as follows:

In paragraph three of the Notice, ''Stephen T. Veach'' should be replaced with ''Stephen T. Veatch,'' ''Trunkline Gas Company'' should be replaced with ''Trunkline Gas Company, LLC'' and Mr. Veatch's e-mail address should be changed to ''*stephen.veatch@sug.com*.''

On Page 2, the notice inadvertently has a ''comment date of February 4, 2008.'' Please disregard the February 4, 2008 comment date. The notice correctly states and provides that: ''Any person or the Commission's Staff may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and, pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (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.''

Kimberly D. Bose,

Secretary.

[FR Doc. E8–1151 Filed 1–23–08; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–RCRA–2007–0418, FRL 8520–7]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Identification, Listing and Rulemaking Petitions (Renewal); EPA ICR Number 1189.20, OMB Control Number 2050–0053

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA)(44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before February 25, 2008.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–RCRA–2007–0418, to (1) EPA online using www.regulations.gov (our preferred method), by e-mail to *rcra-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, RCRA Docket (2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB),

Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Chichang Chen, Office of Solid Waste (5304P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–0441; fax number: (703) 308–0514; e-mail address: *chen.chichang@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On September 7, 2007 (72 FR 51439), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments on this ICR. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–RCRA–2007–0418, which is available for online viewing at *www.regulations.gov*, or in person viewing at the RCRA Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the RCRA Docket is 202–566–0270.

Use EPA's electronic docket and comment system at *www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov*.

Title: Identification, Listing and Rulemaking Petitions (Renewal).

ICR Number: EPA ICR Number 1189.20, OMB Control Number 2050–0053.

ICR Status: This ICR is scheduled to expire on January 31, 2008. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Under the authority of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, Congress directed the U.S. Environmental Protection Agency (EPA) to implement a comprehensive program for the safe management of hazardous waste. In addition, Congress wrote that ''[a]ny person may petition the Administrator for the promulgation, amendment or repeal of any regulation'' under RCRA (section 7004(a)).

40 CFR Parts 260 and 261 contain provisions that allow regulated entities to apply for petitions, variances, exclusions, and exemptions from various RCRA requirements. In this ICR, EPA presents a comprehensive description of these paperwork requirements and estimates the total annual burden and cost to respondents and the government.

Burden Statement: The annual public reporting burden for this ICR is estimated to average 27 hours per response, and the annual recordkeeping burden for this ICR is estimated to average 2 hours per response.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Respondents/Affected Entities: Business/industries subject to the regulations under 40 CFR Parts 260 and 261.

Estimated Number of Respondents: 2,535.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 73,752 hours.

Estimated Total Annualized Cost Burden: $11,917,572 (includes $9,239,315 annualized O&M costs and $2,678,259 annualized labor costs).

Changes in the Estimates: There is a decrease of 2,177 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. The burden decrease is an adjustment to the existing estimates based on data gathered through consultations with EPA Regional and State offices and the regulated community, not due to program changes.

Dated: January 17, 2008.

Sara Hisel-McCoy,

Director, Collection Strategies Division.

[FR Doc. E8–1182 Filed 1–23–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–RCRA–2007–0417; FRL–8520–6]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Hazardous Waste Generator Standards (Renewal), EPA ICR Number 0820.10, OMB Control Number 2050–0035

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on January 31, 2008.

Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its expected burden and cost.

DATES: Additional comments may be submitted on or before February 25, 2008.

ADDRESSES: Submit your comments, referencing docket number EPA–HQ–RCRA–2007–0417, to (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to *rcra-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Resource Conservation and Recovery Act (RCRA) Docket, Mail Code 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jim O'Leary, Office of Solid Waste, Mail Code 5304P, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8827; fax number: (703) 308–0514; e-mail address: *oleary.jim@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On September 7, 2007 (72 FR 51437), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments on this ICR.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–RCRA–2007–0417, which is available for online viewing at *www.regulations.gov*, or in person viewing at the RCRA Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the RCRA Docket is 202–566–0270.

Use EPA's electronic docket and comment system at *www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov*.

Title: Hazardous Waste Generator Standards (Renewal).

ICR numbers: EPA ICR No. 820.10, OMB Control No. 2050–0035.

ICR Status: This ICR is scheduled to expire on January 31, 2008. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Under the Resource Conservation and Recovery Act (RCRA), as amended, Congress directed the U.S. Environmental Protection Agency to implement a comprehensive program for the safe management of hazardous waste. The core of the national waste management program is the regulation of hazardous waste from generation to transport to treatment and eventual disposal, or from ''cradle to grave.''

This ICR addresses the following categories of informational requirements in part 262: pre-transport requirements for both large (LQG) and small (SQG) quantity generators; storage requirements in tanks, containment buildings and drip pads; air emission standards requirements for LQGs (referenced in 40 CFR Part 265, Subparts AA and BB); recordkeeping and reporting requirements for LQGs and SQGs; and export requirements for LQGs and SQGs (i.e., notification of intent to export and annual reporting).

This collection of information is necessary to help generators and EPA: (1) Identify and understand the waste streams being generated and the hazards associated with them; (2) determine whether employees have acquired the necessary expertise to perform their jobs; and (3) determine whether LQGs have developed adequate procedures to respond to unplanned sudden or non-sudden releases of hazardous waste or hazardous constituents to air, soil, or surface water. This information is also needed to help EPA determine whether tank systems are operated in a manner that is fully protective of human health and the environment and to ensure that releases to the environment are managed quickly and efficiently.

Additionally, this information contributes to EPA's goal of preventing contamination of the environment from hazardous waste accumulation practices, including contamination from equipment leaks and process vents. Export information is needed to ensure that:(1) Foreign governments consent to U.S. exported wastes; (2) exported waste is actually managed at facilities listed in the original notifications; and (3) documents are available for compliance audits and enforcement actions. In general, these requirements contribute to EPA's goal of preventing contamination of the environment.

Burden Statement: The average public reporting under this collection of information is estimated to be 2.78 hours per respondent. The average public recordkeeping burden under this collection of information is estimated to be 0.05 hours. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Private Sector.

Estimated Number of Respondents: 101,500.

Frequency of Response: Occasionally and biennially.

Estimated Total Annual Hour Burden: 286,866.

Estimated Total Annual Cost: $11,321,660. This includes $22,770 in annualized capital costs, $15,473 in O&M costs, and $11,283,417 in Respondent Labor costs.

Changes in the Estimates: There is a decrease of 166,217 annual hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burden of 453,083 hours. This change primarily results from a decrease of 22,882 facilities, as well as

a change in assumptions associated with such categories as containment buildings, and contingency planning resulting in the reduction of additional burden hours.

Dated: January 17, 2008.

Sara Hisel-McCoy,

Director, Collection Strategies Division.

[FR Doc. E8–1184 Filed 1–23–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2007–1121; FRL 8519–7]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Fuel Quality Regulations for Diesel Fuel Sold in 2001 & Later Years; for Tax-Exempt (Dyed) Highway Diesel Fuel; & Nonroad Locomotive & Marine Diesel Fuel (Renewal); EPA ICR No. 1718.08, OMB Control No. 2060–0308

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before February 25, 2008.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2007–1121, to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *pastorkovich.anne-marie@epa.gov* or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket, 1200 Pennsylvania Ave., NW., Mail Code: 2822T, Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Anne-Marie C. Pastorkovich, Attorney/Advisor, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Mail Code: 6406J, Washington, DC 20460; telephone number: 202–343–9623; fax number: 202–343–2801; e-mail address: *pastorkovich.anne-marie@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On November 20, 2007 (72 FR 65327), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2007–1121, which is available for online viewing at *www.regulations.gov*, or in person viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Air Docket is 202–566–1742.

Use EPA's electronic docket and comment system at *www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov*.

Title: Fuel Quality Regulations for Diesel Fuel Sold in 2001 & Later Years; for Tax-Exempt (Dyed) Highway Diesel Fuel; & Nonroad Locomotive & Marine Diesel Fuel (Renewal).

ICR numbers: EPA ICR No. 1718.08, OMB Control No. 2060–0308.

ICR Status: This ICR is scheduled to expire on January 31, 2008. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: This ICR covers recordkeeping and reporting requirements for motor vehicle diesel fuel and non-road, locomotive, and marine diesel fuel. It also includes recordkeeping and reporting associated with the placement of codes on dyed diesel fuel (the dye is required under IRS regulations). The main purpose for recordkeeping and reporting is to ensure compliance with the regulations at 40 CFR Part 80, Subpart I—Motor Vehicle, Non-Road, Locomotive and Marine Diesel Fuel. Because the diesel fuel regulations are written to permit several types of flexibility, periodic reporting (annual and quarterly) is necessary in order for EPA to monitor compliance. Most reporting is mandatory. Parties may assert a claim of business confidentiality and submissions covered by such a claim will be treated in accordance with procedures at 40 CFR Part 2 and established Agency procedures.

With this ICR the Office of Air and Radiation (OAR) is also seeking permission to collect applications from refiners, importers, and independent laboratories in order to permit them to use performance-based test methods for measuring sulfur in diesel fuel and detecting the presence of a marker in diesel sold as heating oil. This was previously covered by EPA ICR Number 2180.02 (2060–0566), but since the entire burden in that ICR is related to motor vehicle and non-road diesel fuel, we are including it in this ICR and will terminate 2180.02 upon approval.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 0.62 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the

existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Businesses and other for-profits in the private sector.

Estimated Number of Respondents: 4,875.

Frequency of Response: Annual, quarterly, and/or on occasion.

Estimated Total Annual Hour Burden: 264,150.

Estimated Total Annual Cost: $2,626,000 (all purchased services).

Changes in the Estimates: There is a net decrease of 48,083 hours and $5,874,000 in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. The change in burden hours reflects a decrease of 51,683 hours due to agency adjustment and an increase of 3,600 hours due to agency discretion. The additional 3,600 hours cover performance-based test methods previously counted under ICR 2180.02. The reduction in hours is due mostly to reporting requirements that applied at the start of the program that are no longer applicable to most parties (e.g., initial registration, application for flexibilities like small refiner status).

Dated: January 17, 2008.

Sara Hisel-McCoy,

Director, Collection Strategies Division.

[FR Doc. E8–1185 Filed 1–23–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OA–2007–0706; FRL–8520–1]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; State Small Business Stationary Source Technical and Environmental Compliance Assistance Programs (SBTCP) Annual Reporting Form (Renewal); EPA ICR No. 1748.05, OMB Control No. 2060–0337

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 et seq.), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before February 25, 2008.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OA–2007–0706, to: (1) EPA online using *www.regulations.gov* (our preferred method), by e-mail to *oei.docket@epa.gov*, or by mail to: EPA Docket Center, Office of Environmental Information Docket (2822T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Angela Suber, Office of Small and Disadvantaged Business Utilization, 1230T, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–566–2827; fax number: 202–566–1505; e-mail address: *suber.angela@epa.gov*, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On September 25, 2007, (72 FR 54444), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments during the comment period. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OA–2007–0706, which is available for online viewing at *www.regulations.gov*, or in person viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the OEI Docket is 202–566–1752.

Use EPA's electronic docket and comment system at *www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov*.

Title: State Small Business Stationary Source Technical and Environmental Compliance Assistance Programs (SBTCP) Annual Reporting Form (Renewal).

ICR numbers: EPA ICR No. 1748.05, OMB Control No. 2060–0337.

ICR Status: This ICR is scheduled to expire on November 30, 2007. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: As part of the Clean Air Act Amendments of 1990, the U.S. Congress included, as part of Section 507, the requirement that each state establish a Small Business Stationary Source Technical and Environmental Compliance Assistance Program to assist small businesses in complying with the Act. These programs are generally known as state Small Business Environmental Assistance Programs (SBEAP). EPA must provide the Congress with periodic reports from the EPA Small Business Ombudsman (SBO) on these programs, including their effectiveness, difficulties encountered, and other relevant information. Each state assistance program will submit requested information to EPA for compilation and summarization. This collection of information is mandatory under Section 507(a), (d), and (e) of the Clean Air Act as amended in 1990, Public Law 101–549, November 15, 1990. This Act directs EPA to monitor

the state SBEAPs and to periodically report to Congress on the effectiveness of these programs. This responsibility has been delegated to the EPA SBO. Information in the annual Report to Congress is aggregated and is not of a confidential nature. None of the information collected by this action results in/or requests sensitive information of any nature from the states.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 80 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: State Small Business Stationary Source Technical and Environmental Compliance Assistance Programs (SBTCP).

Estimated Number of Respondents: 53.

Frequency of Response: Annual.

Estimated Total Annual Hour Burden: 4,240.

Estimated Total Annual Cost: $144,997, includes $0 annualized capital or O&M costs.

Changes in the Estimates: There is an increase of 2,120 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. The new total estimate of 80 hours per state to complete the Annual Survey Form presented in this ICR represents an increase of 40 hours from what was estimated to complete the previous form. A workgroup comprising representatives from several state 507 programs reviewed the reporting form and the burden estimates for this ICR. The group determined that the burden to complete the previous form was underestimated and the addition of new outcome measures to the revised form will require additional time to track and report. The new burden estimate represents an increase to 54 hours to complete the information requested in the previous form and an additional 26 hours to complete the new program outcome measures recommended by the state 507 programs.

Dated: January 17, 2008.

Sara Hisel-McCoy,

Director, Collection Strategies Division.

[FR Doc. E8–1186 Filed 1–23–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–SFUND–2004–0006; FRL–8519–9]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Community Right-to-Know Reporting Requirements of the Emergency Planning and Community Right-to-Know Act (Renewal); EPA ICR No. 1352.11, OMB Control No. 2050–0072

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before February 25, 2008.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–SFUND–2004–0006, to (1) EPA online using *www.regulations.gov* (our preferred method), by e-mail to *superfund.docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Superfund Docket (Mail Code 2822T), 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Sicy Jacob, Office of Emergency Management, 5104A, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8019; fax number: (202) 564–2625; E-mail address: *jacob.sicy@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On August 6, 2007 (72 FR 43636), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received two comments during the comment period, which are addressed in the ICR. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–SFUND–2004–0006, which is available for online viewing at *www.regulations.gov*, or in person viewing at the Superfund Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Superfund Docket is 202–566–0276.

Use EPA's electronic docket and comment system at *www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov*.

Title: Community Right-to-Know Reporting Requirements of the Emergency Planning and Community Right-to-Know Act (Renewal).

ICR numbers: EPA ICR No. 1352.11, OMB Control No. 2050–0072.

ICR Status: This ICR is scheduled to expire on January 31, 2008. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number.

The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The authority for these requirements is sections 311 and 312 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 1986 (42 U.S.C. 11011, 11012). EPCRA Section 311 requires owners and operators of facilities subject to OSHA Hazard Communication Standard (HCS) to submit a list of chemicals or Material Safety Data Sheets (MSDSs) (for those chemicals that exceed thresholds, specified in 40 CFR part 370) to the State Emergency Response Commission (SERC), Local Emergency Planning Committee (LEPC) and the local fire department (LFD) with jurisdiction over their facility. This is a one-time requirement unless a new facility becomes subject to the regulations or updating the information by facilities that are already covered by the regulations. EPCRA section 312 requires owners and operators of facilities subject to OSHA HCS to submit an inventory form (for those chemicals that exceed the thresholds, specified in 40 CFR part 370) to the SERC, LEPC, and LFD with jurisdiction over their facility. This form is to be submitted on March 1 of each year, on the inventory of chemicals in the previous calendar year.

Burden Statement: The annual average burden for MSDS reporting (basic and additional reporting) is estimated at 6.75 hours for new facilities. Additional reporting, which is to submit revised and new MSDSs for currently covered and new facilities is 2 hours. The average burden for new and currently covered facilities to submit MSDS upon request is 1 hour. The average burden to comply with Tier II inventory reporting for small, medium and large manufacturers is 8, 80 and 120 hours, respectively. The average burden to comply with Tier II inventory reporting for small, medium and large non-manufacturers is 6, 20, and 40 hours, respectively. There are no recordkeeping requirements for facilities under EPCRA sections 311 and 312, although it is assumed that they will maintain a copy of annual reports to use for future filings. The recordkeeping for MSDSs is mandated under OSHA rules.

The average burden for state and local governments to respond to requests for MSDSs or Tier II information under 40 CFR 370.30 is estimated to be one hour per request. The average burden for managing and maintaining the reports and MSDS files is estimated to be 32.50 hours. The average burden for maintaining and updating a 312 database is estimated to be 320 hours.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Any facility owner or operator that is required to prepare or have a material safety data sheet (MSDS) for a hazardous chemical under OSHA Hazardous Communication Standard and if the chemical meets the threshold level specified in 40 CFR part 370. Some facilities include but are not limited to, chemical, petroleum, warehouse, food, paper mills, etc.

Estimated Number of Respondents: 353,552

Frequency of Response: Annually, on occasion

Estimated Total Annual Hour Burden: 3,792,432

Estimated Total Annual Cost: $207,454,485, includes $6,389,900 annualized capital or O&M costs.

Changes in the Estimates: There is an increase of 1,763,732 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. EPA had contacted small, medium and large size facilities in both manufacturing and non-manufacturing sectors to develop this burden. In previous ICRs, the Agency only contacted small and medium size facilities and used a weighted average. For this ICR, EPA applied the burden reported by each sector that we contacted. There is a decrease of 209,948 in the estimated universe from the previous ICR. EPA believes that the universe estimates in this ICR are more accurate since most States now collect Tier II electronically so they were able to provide EPA with a better estimate of the number of facilities subject to sections 311 and 312 than was estimated in previous years.

Dated: January 17, 2008.

Sara Hisel-McCoy,

Director, Collection Strategies Division.

[FR Doc. E8–1187 Filed 1–23–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2007–0032; FRL–8519–8]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NSPS for Portland Cement Plants (Renewal), EPA ICR Number 1051.10, OMB Control Number 2060–0025

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before February 25, 2008.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2007–0032, to (1) EPA online using www.regulations.gov (our preferred method), or by e-mail to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 2822T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Leonard Lazarus, Compliance Assessment and Media Programs Division (CAMPD), Office of Compliance, (2223A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–6369; fax number: (202) 564–0050; e-mail address: *lazarus.leonard@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On March 9, 2007 (72 FR 10735), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2007–0032, which is available for public viewing online at *http://www.regulations.gov,* in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov,* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov.*

Title: NSPS for Portland Cement Plants (Renewal).

ICR Numbers: EPA ICR Number 1051.10, OMB Control Number 2060–0025.

ICR Status: This ICR is scheduled to expire on January 31, 2008. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while his submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Particulate matter emissions from portland cement plants cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Therefore, NSPS were promulgated for this source category.

The control of emissions of particulate matter from portland cement plants requires not only the installation of properly designed equipment, but also the operation and maintenance of that equipment. Emissions of particulate matter from portland cement plants are the result of operation of kilns, clinker coolers, raw mill systems, raw mill dryers, raw material storage, clinker storage, finished product storage, conveyor transfer points, bagging and bulk loading and unloading systems. These standards rely on the capture of particulate emissions by a baghouse or electrostatic precipitator.

In order to ensure compliance with these standards, adequate reporting and recordkeeping is necessary. In the absence of such information, enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act.

All reports are sent to the delegated state or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA regional office. Notifications are used to inform the Agency or delegated authority when a source becomes subject to the standard. The reviewing authority may then inspect the source to check if the pollution control devices are properly installed and operated. Performance test reports are needed as these are the Agency's record of a source's initial capability to comply with the emission standard and note the operating conditions under which compliance was achieved. The quarterly reports are used for problem identification, as a check on source operation and maintenance, and for compliance determinations. The standard also requires semiannual reporting of deviations from monitored opacity, as this is a good indicator of the source's compliance status.

Responses to this information collection are mandatory (40 CFR part 60, subpart F). Any information submitted to the Agency for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in title 40, chapter 1, part 2, subpart B—Confidentiality of Business Information (see 40 CFR 2; 41 FR 36902, September 1, 1976; amended by 43 FR 40000, September 8, 1978; 43 FR 42251, September 20, 1978; 44 FR 17674, March 23, 1979).

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 56 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Portland Cement Plants.

Estimated Number of Respondents: 118.

Frequency of Response: Initially and Semiannually.

Estimated Total Annual Hour Burden: 13,806 hours.

Estimated Total Annual Cost: $1,413,511, which includes capital/startup costs of $37,000, O&M costs of $495,600, and labor costs of $880,911.

Changes in the Estimates: There is no change in the labor hours or cost in this ICR compared to the previous ICR. This is due to two considerations. First, the regulations have not changed over the past three years and are not anticipated to change over the next three years. Secondly, the growth rate for the industry is very low, negative or non-existent, so there is no significant change in the overall burden.

Since there are no changes in the regulatory requirements and there is no significant industry growth, the labor hours and cost figures in the previous ICR are used in this ICR and there is no change in burden to industry.

Dated: January 17, 2008.

Sara Hisel-McCoy,

Director, Collection Strategies Division.

[FR Doc. E8–1188 Filed 1–23–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8520–5; Docket ID No. EPA–HQ–ORD–2007–1095]

Draft Toxicological Review of Chlordecone (Kepone): In Support of the Summary Information in the Integrated Risk Information System (IRIS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Peer-Review Workshop and Public Comment Period.

SUMMARY: EPA is announcing that Versar, under a contract with EPA, will convene an independent panel of experts and organize and conduct an external peer-review workshop to review the external review draft document entitled, ''Toxicological Review of Chlordecone (Kepone): In Support of Summary Information on the Integrated Risk Information System (IRIS)'' (EPA/635/R–07/004). The EPA is also announcing a public comment period for the draft document. EPA intends to consider comments and recommendations from the public and the expert panel meeting when EPA finalizes the draft document.

The public comment period and the external peer-review workshop 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 this notice, to the external peer-review panel prior to the workshop for their consideration.

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 invites the public to register to attend this workshop as observers. In addition, Versar invites the public to give brief oral comments at the workshop 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 any public comments that EPA receives in accordance with this notice.

DATES: The peer-review panel workshop will be held on April 10, 2008 at 9 a.m. The 60-day public comment period begins on January 24, 2008 and ends March 24, 2008. Technical comments should be in writing and must be received by EPA by March 24, 2008. EPA intends to submit comments from the public received by this date to Versar prior to the workshop for consideration by the panel.

ADDRESSES: The peer-review workshop will be held at the Westin Alexandria, 400 Courthouse Square, Alexandria, Virginia 22314. Versar is organizing, convening, and conducting the peer-review workshop. To attend the workshop, register by April 1, 2008 via the Internet at *http://epa.versar.com/kepone.* You may also register by calling Versar at 703–750–3000 extension 582, or sending an email to Gina Casciano at *gcasciano@versar.com.* You must register by April 1, 2008 and indicate whether you wish to provide brief oral comments at the workshop.

The draft ''Toxicological Review of Chlordecone (Kepone): 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 NCEA's Information Management Team; 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.

Comments may be submitted electronically via *www.regulations.gov,* by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions as provided in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: For information on the peer review workshop, contact Gina Casciano at Versar; telephone: 703–750–3000 extension 582 or e-mail *gcasciano@versar.com.* For information on the public comment period, contact the Office of Environmental Information Docket; telephone: 202–566–1752; facsimile: 202–566–1753; or e-mail: *ORD.Docket@epa.gov.* If you have questions about the document, contact Kathleen Newhouse, IRIS Staff, National Center for Environmental Assessment, (8601P), U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone: 703–347–8641; e-mail: *newhouse.kathleen@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 540 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. Workshop Information

Members of the public may attend the workshop may attend the workshop as observers, and there will be a limited time for oral comments from the public. Please let Versar know if you wish to make comments during the workshop prior to the meeting by registering on the Web site at *http://epa.versar.com/kepone* and indicating your intent to make oral comments. Space is limited, and reservations will be accepted on a first-come, first-served basis.

III. How to Submit Technical Comments to the Docket at *www.regulations.gov*

Submit your comments, identified by Docket ID No. EPA–HQ–ORD2007–1095 by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: ORD.Docket@epa.gov.*
- *Fax:* 202–566–1753.
- *Mail:* Office of Environmental Information (OEI) Docket (Mail Code: 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. The phone number is 202–566–1752.
- *Hand Delivery:* The OEI Docket is located in the EPA Headquarters Docket Center, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open

from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202–566–1744. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

If you provide comments by mail or hand delivery, please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2007–1095. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked ''late,'' and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at *www.regulations.gov*, including any personal information provided, unless a comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the OEI Docket in the EPA Headquarters Docket Center.

Dated: January 17, 2008.

Rebecca Clark,

Deputy Director, National Center for Environmental Assessment.

[FR Doc. E8–1224 Filed 1–23–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[Regional Docket Nos. V–2006–4, FRL–8520–2]

Clean Air Act Operating Permit Program; Petition for Objection to State Operating Permit for Wisconsin Public Service Corporation—Weston Generating Station

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final order on petition to object to Clean Air Act operating permit.

SUMMARY: This document announces that the EPA Administrator has responded to a petition asking EPA to object to a Clean Air Act (Act) operating permit issued by the Wisconsin Department of Natural Resources. Specifically, the Administrator granted in part and denied in part the petition submitted by the Sierra Club to object to the operating permit for Wisconsin Public Service Corporation—Weston Generating Station (Weston).

Pursuant to section 505(b)(2) of the Act, a Petitioner may seek in the United States Court of Appeals for the appropriate circuit judicial review of those portions of a petition which EPA denied. Any petition for review shall be filed within 60 days from the date this notice appears in the **Federal Register**, pursuant to section 307 of the Act.

ADDRESSES: You may review copies of the final order, the petition, and other supporting information at the EPA, Region 5 Office, 77 West Jackson Boulevard, Chicago, Illinois 60604. If you wish to examine these documents, you should make an appointment at least 24 hours before visiting day. Additionally, the final order for the Weston petition is available electronically at: *http://yosemite.epa.gov/r5/ardcorre.nsf/permits.*

FOR FURTHER INFORMATION CONTACT: Pamela Blakley, Chief, Air Permits Section, Air Programs Branch, Air and Radiation Division, EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, telephone (312) 886–4447.

SUPPLEMENTARY INFORMATION: The Act affords EPA a 45-day period to review, and object to as appropriate, operating permits proposed by state permitting authorities. Section 505(b)(2) of the Act authorizes any person to petition the EPA Administrator within 60 days after the expiration of the EPA review period to object to a state operating permit if EPA has not done so. A petition must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the state, unless the petitioner demonstrates that it was impracticable to raise issues during the comment period, or the grounds for the issues arose after this period.

On November 20, 2006, EPA received a petition from the Sierra Club requesting that EPA object to the Title V operating permit for Weston. The petition alleged that: (1) The permit limits evidence that can be used by citizens to demonstrate noncompliance; (2) the permit omits operating limitations applicable to Unit 3; (3) the permit fails to include a compliance schedule for the plant's continuing violations of the heat and energy limits in the prevention of significant deterioration (''PSD'') permit for Unit 3; (4) the permit contains insufficient monitoring for particulate matter emissions from Units 1, 2, and 3; (5) the permit fails to require sufficient monitoring to ensure compliance with visible emission limits on sources B11, B12, and B13; (6) revisions to the permit constitute a change in the method of operation without going through PSD permitting; (7) Units 1 and 2 underwent major modifications without PSD permit review; and (8) Weston Generating Station has unaddressed opacity violations.

On December 19, 2007, the Administrator issued an order granting in part and denying in part the petition. The order explains the reasons behind EPA's conclusion.

Dated: January 11, 2008.

Gary Gulezian,

Acting Regional Administrator, Region 5.

[FR Doc. E8–1221 Filed 1–23–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8520–4]

Clean Water Act Section 303(d): Final Agency Action and Availability of 4 Total Maximum Daily Loads (TMDL) in Arkansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the final agency action of 4 TMDLs and the availability of the administrative record files for comment on 4 TMDLs and the calculations for these TMDLs prepared by EPA Region 6 for waters listed in the State of Arkansas, under section 303(d) of the Clean Water Act (CWA). These TMDLs were completed in response to the lawsuit styled *Sierra Club, et al.* v. *Browner, et al.*, No. LR–C–99–114.

DATES: Comments must be submitted in writing to EPA on or before February 25, 2008.

ADDRESSES: Comments on the 4 TMDLs should be sent to Diane Smith, Environmental Protection Specialist, Water Quality Protection Division, U.S. Environmental Protection Agency Region 6, 1445 Ross Ave., Dallas, TX 75202–2733 or e-mail: *smith.diane@epa.gov.* For further information, contact Diane Smith at (214) 665–2145 or fax 214.665.7373. The administrative record files for the 4 TMDLs are available for public inspection at this address as well. Documents from the administrative record files may be viewed at *http://www.epa.gov/earth1r6/6wq/npdes/tmdl/index.htm,* or obtained by calling or writing Ms. Smith at the above address. Please contact Ms. Smith to schedule an inspection.

FOR FURTHER INFORMATION CONTACT: Diane Smith at (214) 665–2145.

SUPPLEMENTARY INFORMATION: In 1999, five Arkansas environmental groups, the Sierra Club, Federation of Fly Fishers, Crooked Creek Coalition, Arkansas Fly Fishers, and Save our Streams (plaintiffs), filed a lawsuit in Federal Court against the EPA, styled *Sierra Club, et al.* v. *Browner, et al.*, No. LR–C–99–114. Among other claims, plaintiffs alleged that EPA failed to establish Arkansas TMDLs in a timely manner.

EPA Seeks Comment on 4 TMDLs

By this notice EPA is seeking comment on the following 4 TMDLs for waters located within Arkansas basins:

Segment-Reach	Waterbody name	Pollutant
11140109–013	Holly Creek	Fecal coliform.
11140109–013	Holly Creek	E. coli.
11140109–033	Mine Creek	Fecal coliform.
11140109–033	Mine Creek	E. coli.

EPA requests that the public provide to EPA any water quality related data and information that may be relevant to the calculations for the 4 TMDLs. EPA will review all data and information submitted during the public comment period and revise the TMDLs where appropriate. EPA will then forward the TMDLs to the Arkansas Department of Environmental Quality (ADEQ). The ADEQ will incorporate the TMDLs into its current water quality management plan.

Dated: January 14, 2008.

William K. Honker,

P.E., Deputy Director, Water Quality Protection Division, EPA Region 6.

[FR Doc. E8–1193 Filed 1–23–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8520–3]

Clean Water Act Section 303(d): Final Agency Action on 3 Arkansas Total Maximum Daily Loads (TMDLs)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the final agency action on 3 TMDLs established by EPA Region 6 for waters listed in the State of Arkansas, under section 303(d) of the Clean Water Act (CWA). These TMDLs were completed in response to the lawsuit styled *Sierra Club, et al.* v. *Browner, et al.*, No. LR–C–99–114. Documents from the administrative record files for the final 3 TMDLs, including TMDL calculations may be viewed at *http://www.epa.gov/region6/6wq/npdes/tmdl/index.htm.*

ADDRESSES: The administrative record files for these 3 TMDLs may be obtained by writing or calling Ms. Diane Smith, Environmental Protection Specialist, Water Quality Protection Division, U.S. Environmental Protection Agency Region 6, 1445 Ross Ave., Dallas, TX 75202–2733. Please contact Ms. Smith to schedule an inspection.

FOR FURTHER INFORMATION CONTACT: Diane Smith at (214) 665–2145.

SUPPLEMENTARY INFORMATION: In 1999, five Arkansas environmental groups, the Sierra Club, Federation of Fly Fishers, Crooked Creek Coalition, Arkansas Fly Fishers, and Save our Streams (plaintiffs), filed a lawsuit in Federal Court against the EPA, styled *Sierra Club, et al.* v. *Browner, et al.*, No. LR–C–99–114. Among other claims, plaintiffs alleged that EPA failed to establish Arkansas TMDLs in a timely manner.

EPA Takes Final Agency Action on 3 TMDLs

By this notice EPA is taking final agency action on the following 3 TMDLs for waters located within the State of Arkansas:

Segment-Reach	Waterbody name	Pollutant
08020203–007	Blackfish Bayou	Siltation/Turbidity.
08020203–005	Blackfish Bayou	Siltation/Turbidity.
08020203–003	Blackfish Bayou	Siltation/Turbidity.

EPA requested the public to provide EPA with any significant data or information that might impact the 3 TMDLs at **Federal Register** Notice: Volume 72, Number 241, pages 71409—71410 (December 17, 2007). No comments were received.

Dated: January 14, 2008.

William K. Honker,

P.E., Deputy Director, Water Quality Protection Division, EPA Region 6.

[FR Doc. E8–1195 Filed 1–23–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2008–0012; FRL–8348–6]

FIFRA Scientific Advisory Panel; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 4–day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel (FIFRA SAP) to consider and review the Endocrine Disruptor Screening Program (EDSP) Proposed Tier-1 Screening Battery.

DATES: The meeting will be held on March 25–28, 2008, from approximately 8:30 a.m. to 5:00 p.m, Eastern Standard Time.

Comments. The Agency encourages written comments be submitted by March 11, 2008 and requests for oral comments be submitted by March 18, 2008. Written comments and requests to make oral comments are accepted until the date of the meeting but anyone submitting written comments after March 11, 2008 should contact the Designated Federal Official (DFO) listed under **FOR FURTHER INFORMATION CONTACT**. For additional instructions, see Unit I.C. of the **SUPPLEMENTARY INFORMATION**.

Nominations. Nominations of candidates to serve as ad hoc members of the FIFRA SAP for this meeting should be provided on or before February 7, 2008.

Special accommodations. For information on access or services for individuals with disabilities, and to request accommodation of a disability, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** at least 10 days prior to the meeting to give EPA as much time as possible to process your request.

ADDRESSES: The meeting will be held at the Environmental Protection Agency, Conference Center - Lobby Level, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, Virginia 22202.

Comments. Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2008–0012, by one of the following methods:

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

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

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

Instructions. Direct your comments to docket ID number EPA–HQ–OPP–2008–0012. If your comments contain any information that you consider to be CBI or otherwise protected, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** to obtain special instructions before submitting your comments. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket. All documents in the docket are listed in a docket index available in regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. Although listed in a docket 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 in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

Nominations: Nominations, requests to present oral comments, and requests for special accommodations. Submit nominations to serve as an ad hoc member of the FIFRA SAP, requests for special seating accommodations, or requests to present oral comments to the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Jim Downing, DFO, Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8432; fax number: (202) 564–8382; e-mail addresses: *downing.jim@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of particular interest to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), FIFRA, and the Food Quality Protection Act of 1996 (FQPA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions

regarding the applicability of this action to a particular entity, consult the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

When submitting comments, remember to:

1. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).
2. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
4. Describe any assumptions and provide any technical information and/or data that you used.
5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
6. Provide specific examples to illustrate your concerns and suggest alternatives.
7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
8. Make sure to submit your comments by the comment period deadline identified.

C. How May I Participate in this Meeting?

You may participate in this meeting by following the instructions in this unit. To ensure proper receipt by EPA, it is imperative that you identify docket ID number EPA–HQ–OPP–2008–0012 in the subject line on the first page of your request.

1. *Written comments*. The Agency encourages that written comments be submitted, using the instructions in **ADDRESSES**, no later than March 11, 2008, to provide FIFRA SAP the time necessary to consider and review the written comments. Written comments are accepted until the date of the meeting but anyone submitting written comments after March 11, 2008 should contact the DFO listed under **FOR FURTHER INFORMATION CONTACT**. Anyone submitting written comments at the meeting should bring 30 copies for distribution to the FIFRA SAP.

2. *Oral comments*. The Agency encourages that each individual or group wishing to make brief oral comments to FIFRA SAP submit their request to the DFO listed under **FOR FURTHER INFORMATION CONTACT** no later than March 18, 2008, in order to be included on the meeting agenda. Requests to present oral comments will be accepted until the date of the meeting and, to the extent that time permits, the Chair of the FIFRA SAP may permit the presentation of oral comments at the meeting by interested persons who have not previously requested time. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment (e.g., overhead projector, 35 mm projector, chalkboard). Oral comments before FIFRA SAP are limited to approximately 5 minutes unless prior arrangements have been made. In addition, each speaker should bring 30 copies of his or her comments and presentation slides for distribution to the FIFRA SAP at the meeting.

3. *Seating at the meeting*. Seating at the meeting will be open and on a first-come basis.

4. *Request for nominations to serve as ad hoc members of the FIFRA SAP for this meeting*. As part of a broader process for developing a pool of candidates for each meeting, the FIFRA SAP staff routinely solicits the stakeholder community for nominations of prospective candidates for service as ad hoc members of the FIFRA SAP. Any interested person or organization may nominate qualified individuals to be considered as prospective candidates for a specific meeting. Individuals nominated for this meeting should have expertise in one or more of the following areas: Endocrinology, toxicology, aquatic toxicology, thyroid biology, reproductive or developmental toxicology/endocrinology, comparative endocrinology, and toxicological pathology. Nominees should be scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments on the scientific issues for this meeting. Nominees should be identified by name, occupation, position, address, and telephone number. Nominations should be provided to the DFO listed under **FOR FURTHER INFORMATION CONTACT** on or before February 7, 2008. The Agency will consider all nominations of prospective candidates for this meeting that are received on or before this date. However, final selection of ad hoc members for this meeting is a discretionary function of the Agency.

The selection of scientists to serve on the FIFRA SAP is based on the function of the panel and the expertise needed to address the Agency's charge to the panel. No interested scientists shall be ineligible to serve by reason of their membership on any other advisory committee to a Federal department or agency or their employment by a Federal department or agency except the EPA. Other factors considered during the selection process include availability of the potential panel member to fully participate in the panel's reviews, absence of any conflicts of interest or appearance of lack of impartiality, independence with respect to the matters under review, and lack of bias. Although financial conflicts of interest, the appearance of lack of impartiality, lack of independence, and bias may result in disqualification, the absence of such concerns does not assure that a candidate will be selected to serve on the FIFRA SAP. Numerous qualified candidates are identified for each panel. Therefore, selection decisions involve carefully weighing a number of factors including the candidates' areas of expertise and professional qualifications and achieving an overall balance of different scientific perspectives on the panel.

In order to have the collective breadth of experience needed to address the Agency's charge for this meeting, the Agency anticipates selecting approximately 15 to 20 ad hoc scientists. FIFRA SAP members are subject to the provisions of 5 CFR part 2634, Executive Branch Financial Disclosure, as supplemented by the EPA in 5 CFR part 6401. In anticipation of this requirement, prospective candidates for service on the FIFRA SAP will be asked to submit confidential financial information which shall fully disclose, among other financial interests, the candidate's employment, stocks and bonds, and where applicable, sources of research support. The EPA will evaluate the candidates financial disclosure form to assess whether there are financial conflicts of interest, appearance of a lack of impartiality or any prior involvement with the development of the documents under consideration (including previous scientific peer review) before the candidate is considered further for service on the FIFRA SAP. Those who are selected from the pool of prospective candidates will be asked to attend the public meetings and to participate in the discussion of key issues and assumptions at these meetings. In addition, they will be asked to review and to help finalize the meeting minutes. The list of FIFRA SAP members participating at this meeting will be posted on the FIFRA SAP website at *http://www.epa.gov/scipoly/sap* or may be obtained from the OPP

Regulatory Public Docket at *http://www.regulations.gov*.

II. Background

A. Purpose of the FIFRA SAP

The FIFRA SAP serves as the primary scientific peer review mechanism of EPA's Office of Prevention, Pesticides and Toxic Substances (OPPTS) and is structured to provide scientific advice, information and recommendations to the EPA Administrator on pesticides and pesticide-related issues as to the impact of regulatory actions on health and the environment. The FIFRA SAP is a Federal advisory committee established in 1975 under FIFRA that operates in accordance with requirements of the Federal Advisory Committee Act. The FIFRA SAP is composed of a permanent panel consisting of seven members who are appointed by the EPA Administrator from nominees provided by the National Institutes of Health and the National Science Foundation. FIFRA, as amended by FQPA, established a Science Review Board consisting of at least 60 scientists who are available to the Scientific Advisory Panel on an ad hoc basis to assist in reviews conducted by the Scientific Advisory Panel. As a peer review mechanism, the FIFRA SAP provides comments, evaluations and recommendations to improve the effectiveness and quality of analyses made by Agency scientists. Members of the FIFRA SAP are scientists who have sufficient professional qualifications, including training and experience, to provide expert advice and recommendations to the Agency.

B. Public Meeting

The EPA is implementing an Endocrine Disruptor Screening Program (EDSP) in response to a 1996 Congressional mandate under the Federal Food, Drug, and Cosmetic Act (FFDCA). Section 408(p) of the FFDCA required the EPA ''to develop a screening program, using appropriate validated test systems and other scientifically relevant information, to determine whether certain substances may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or other such endocrine effect as EPA may designate (FFDCA 21 U.S.C. 346a(p). In 1998, the Endocrine Disruptor Screening and Testing Advisory Committee (EDSTAC), a panel of experts chartered pursuant to the Federal Advisory Committee Act (FACA) in response to the FFDCA, submitted a final report to advise the EPA on how to develop its Endocrine Disruptor screening and testing program. The screening program was also reviewed and reported on by the EPA's Science Advisory Board and Scientific Advisory Panel (SAB/SAP) as required by the FFDCA. Together, the EDSTAC and SAB/SAP recommended that the EPA address both human and ecological effects and examine effects on the estrogen as well as the androgen and thyroid (EAT) hormonal systems, and that a two-tiered approach be used for screening (EPA. Endocrine Disruptor Screening and Testing Advisory Committee EDSTAC Final Report. August 1998.*http://www.epa.gov/scipoly/oscpendo/pubs/edspoverview/finalrpt.htm).* The purpose of Tier-1 is to identify substances that have the potential to interact with the EAT hormonal systems using a battery of screening assays. The purpose of Tier 2 testing is to identify and establish a dose-response relationship for any adverse effects that might result from the interactions identified through the Tier-1 screening battery.

The EPA has validated (or anticipates completing validation in 2008) several candidate assays for the Tier-1 battery as follows:

Screening assays being considered for the Tier-1 battery:

In vitro

- Rat uterine cytosol and human recombinant estrogen receptor (ER) binding*
- Rat prostate cytosol androgen receptor (AR) binding
- Human cell line (H295R) steroidogenesis*
- Human placental and recombinant aromatase

In vivo

- Uterotrophic (rat)
- Hershberger (rat)
- Pubertal female (rat)
- Pubertal male (rat)
- Adult male (rat)
- Amphibian metamorphosis (frog)
- Fish short-term reproduction

*Consideration of these assays will be contingent on individual assay peer review, which is expected in 2008.

Following an extensive validation process, the EPA has had (or expects to have in 2008) each of these assays peer reviewed independently by a panel of scientific experts. The individual assay peer review process was done to ensure that independent scientific opinions about the candidate assays were obtained and considered. Information regarding individual assay peer review can be found in section IV.D. of the **Federal Register** of July 13, 2007, *http://www.epa.gov/fedrgstr/EPA-PEST/2007/July/Day-13/p13672.pdf.*

The EPA is now convening an independent scientific peer review of the Tier-1 screening battery and has chosen the FIFRA SAP process. The FIFRA SAP will be charged with commenting on whether the EPA's proposed battery composition fulfills its purpose (i.e., to identify the potential to interact with the EAT hormone systems). The SAP will specifically be asked to comment on the strengths and limitations of the proposed battery, and to suggest improvements that could be made to the proposed battery considering candidate assays. The SAP's advice will inform the EPA's final decision on the composition of the EDSP's Tier-1 screening battery.

C. FIFRA SAP Documents and Meeting Minutes

EPA's background paper, related supporting materials, charge/questions to the FIFRA SAP, FIFRA SAP composition (i.e., members and ad hoc members for this meeting), and the meeting agenda will be available by late February 2008. In addition, the Agency may provide additional background documents as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, at *http://www.regulations.gov* and the FIFRA SAP homepage at *http://www.epa.gov/scipoly/sap*.

The FIFRA SAP will prepare meeting minutes summarizing its recommendations to the Agency approximately 90 days after the meeting. The meeting minutes will be posted on the FIFRA SAP website or may be obtained from the OPP Regulatory Public Docket at *http://www.regulations.gov*.

List of Subjects

Environmental protection, pesticides and pests.

January 17, 2008.

Elizabeth Resek,

Acting Director, Office of Science Coordination and Policy.

[FR Doc. E8–1191 Filed 1–23–08; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

[CG Docket No. 03–123; DA 07–5009]

The Consumer & Governmental Affairs Bureau Reports on the First Triennial Review of the Commission's Policies and Practices Under Section 504 of the Rehabilitation Act of 1973

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Consumer & Governmental Affairs Bureau (Bureau) reports on its review of the Commission's policies and practices under section 504 of the Rehabilitation Act of 1973. The Commission's rules mandate that it conduct a review of its current policies and practices in view of advances in relevant technology and achievability every three years. The report concludes that during the past three years, the Commission has successfully provided access to its programs and activities for people with disabilities in accordance with section 504 of the Rehabilitation Act.

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

FOR FURTHER INFORMATION CONTACT: Diane Mason, Consumer & Governmental Affairs Bureau, Disability Rights Office at (202) 418–7126 (voice), (202) 418–7828 (TTY), or e-mail *Diane.Mason@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document DA 07–5009, released December 17, 2007, in CG Docket No. 03–123. A copy of document DA 07–5009 will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554, (202) 418–0270. Document DA 07–5009 also may be purchased from the Commission's duplicating contractor at its Web site, *http://www.bcpiweb.com*, or by calling (800) 378–3160. Document DA 07–5009 also may be found by searching the Commission's Electronic Comment Filing System at *http://www.fcc.gov/cgb/ecfs* (insert CG Docket No. 03–123 into the Proceeding block).

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

Pursuant to 47 CFR 1.1810, every three years the Commission must undertake a self-evaluation of its compliance with section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794. The year 2007 marked the end of the first triennium. The Bureau releases this report accordingly, which reviews disability access services provided during the past three years, considers comments from consumers served, and replies to the single filing submitted in response to the Public Notice seeking comment on the Commission's section 504 policies and practices, *The Consumer & Governmental Affairs Bureau Seeks Comment on the Commission's Policies and Practices Under Section 504 of the Rehabilitation Act of 1973*, CG Docket No. 03–123, DA 07–1396, published at 72 FR 19502, April 18, 2007. The report concludes that during the past three years, the Commission has successfully provided access to its programs and activities for persons with disabilities in accordance with section 504 of the Rehabilitation Act.

Background

By way of background, section 504 of the Rehabilitation Act prohibits discrimination against persons with disabilities under any program or activity receiving federal funds. In 1978, the Act was amended to include any program or activity conducted by an Executive Branch agency or the United States Postal Service. The 1978 amendments also required covered agencies to establish regulations to implement section 504's mandates. In 2003, the Commission released an order amending its section 504 rules, *Amendment of Part 1, Subpart N of the Commission's Rules Concerning Non-Discrimination on the Basis of Disability in the Commission's Programs and Activities*, FCC 03–48 (*2003 Section 504 Order*), published at 68 FR 22315, April 28, 2003. These amendments updated terminology to be consistent with current statutory language, supplied specifications for filing in alternative formats, outlined procedures for requesting reasonable accommodations, and established a triennial self-evaluation.

Concurrent with the release of the *2003 Section 504 Order*, the Commission also produced and distributed the *Federal Communications Commission Section 504 Programs and Activities Accessibility Handbook (Section 504 Handbook).* Since the *Section 504 Handbook* functions as a centralized source for both disability information and accessibility best practices, it was also made available to the public via the Commission's Web site, at: *http://www.fcc.gov/cgb/dro/section_504.html*. Paper copies were supplied upon request.

In order to ensure that consumers with disabilities know how to request the access services they need, instructions for requesting reasonable accommodations are included on the Commission Web site, in most public documents, and in all consumer fact sheets and advisories. Requests for services are generally received via the Commission's FCC504 mailbox (*FCC504@fcc.gov*), the Disability Access telephone line (both voice and TTY), or by direct contact with the Commission's Section 504 Officer.

The report examines the access services provided by the Commission in the following eight forms from July 2004 through June 2007: sign language interpreting; captioning; CART (Computer Assisted Realtime Translation); re-voicing; Braille; large print; electronic formats (*e.g.*, text, PDF); and audio (*e.g.*, MP3 files, CDs). For each form of accommodation, the Commission attempts to acquire the best services available under the circumstances. When the Commission has received consumer reports of dissatisfaction with service providers (*e.g.*, regarding turnaround times for Braille documents, sign language interpreters who have difficulty understanding specific deaf consumers), it has been able to work with the consumers to make sure that their preferences are noted when subsequent requests for accommodations are made. Overall, consumer feedback has been positive. The report concludes that the Commission does not need to modify its accessibility policies and practices at this time, but will continue to address specific accessibility issues as they arise.

Sorenson Communications, Inc. (Sorenson) filed comments on May 22, 2007, focusing on Video Relay Service (VRS) access issues. Sorenson notes that the Commission's public videophone located near the Commission Meeting Room on the TW level of the Portals II Building ''appears to be dedicated to Federal Relay.'' Sorenson asserts that ''[t]he Commission's current practice of restricting on-premises callers to Federal Relay denies those callers the full access mandated'' by section 504. Contrary to Sorenson's assertion, the Commission's public videophone does not require callers to use Federal Relay Service. Calls can be made peer-to-peer or through any VRS provider.

Sorenson also recommends that the information about VRS in the Commission's *Section 504 Handbook* be updated to reflect changes in the services offered through VRS providers—specifically, that VRS calls may now be initiated by hearing callers and that ASL-to-Spanish VRS services are available. These changes will be reflected in the next edition of the *Section 504 Handbook*.

Federal Communications Commission.

Nicole McGinnis,

Deputy Bureau Chief, Consumer & Governmental Affairs Bureau.

[FR Doc. E8–1166 Filed 1–23–08; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Agency Information Collection Activities: Submission for OMB Review; Joint Comment Request

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); and Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice of information collections to be submitted to OMB for review and approval under the Paperwork Reduction Act.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the OCC, the Board, the FDIC, and the OTS (collectively, the agencies) may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. On September 25, 2006, the agencies, under the auspices of the Federal Financial Institutions Council (FFIEC), requested public comment on a proposal to implement new regulatory reporting requirements for banks [1] that qualify for and adopt the Advanced Capital Adequacy Framework to calculate their risk-based capital requirement or are in the parallel run stage of qualifying to adopt this framework (71 FR 55981). The agencies have made certain modifications to the proposed reporting requirements as described in this notice both in response to comments received and to reflect requirements of the final rule implementing the Advanced Capital Adequacy Framework (72 FR 69288, referred to hereafter as the final rule). The FFIEC, of which the agencies are members, has approved publication of these reporting requirements and the agencies are submitting these reporting requirements to OMB for review and approval. Upon approval, OMB control numbers will be obtained.

DATES: Comments must be submitted on or before February 25, 2008. These reporting requirements are effective April 1, 2008, and institutions subject to these requirements must begin reporting data at the end of the first quarter in which they have begun their parallel run period.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments, which should refer to the OMB control number(s), will be shared among the agencies.

OCC: Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mail Stop 1–5, *Attention:* 1557–NEW, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–4448, or by electronic mail to *regs.comments@occ.treas.gov.* You may personally inspect and photocopy comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–5043. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

Board: You may submit comments, which should refer to ''FFIEC 101'' by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov.* Follow the instructions for submitting comments on the *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov.* Include docket number in the subject line of the message.
- *FAX:* 202–452–3819 or 202–452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FDIC: You may submit comments, which should refer to ''FFIEC 101,'' by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/notices.html.*
- *E-mail: comments@FDIC.gov.* Include ''FFIEC 101'' in the subject line of the message.
- *Mail:* Valerie Best (202–898–3907), Supervisory Counsel, Attn: Comments, Room F–1070, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Public Inspection: All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/notices.html* including any personal information provided. Comments may be inspected at the FDIC Public Information Center, Room E–1002, 3501 Fairfax Drive, Arlington, VA 22226, between 9 a.m. and 5 p.m. on business days.

OTS: You may submit comments, identified by ''FFIEC 101'' by any of the following methods:

- *E-mail address: infocollection.comments@ots.treas.gov.* Please include ''FFIEC 101'' in the subject line of the message and include your name and telephone number in the message.
- *Fax:* (202) 906–6518.
- *Mail:* Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, *Attention:* ''FFIEC 101.''
- *Hand Delivery/Courier:* Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Information Collection Comments, Chief Counsel's Office, Attention: ''FFIEC 101.''

Instructions: All submissions received must include the agency name and OMB

[1] For simplicity, and unless otherwise indicated, this notice uses the term ''bank'' to include banks, savings associations, and bank holding companies (BHCs). The terms ''bank holding company'' and ''BHC'' refer only to bank holding companies regulated by the Board and do not include savings and loan holding companies regulated by the OTS. For a detailed description of the institutions covered by this notice, refer to Part I, Section 1, of the final rule entitled Risk-Based Capital Standards: Advanced Capital Adequacy Framework.

Control Number for this information collection. All comments received will be posted without change to the OTS Internet Site at *http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1.*

In addition, you may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755. (Prior notice identifying the materials you will be requesting will assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the date we receive a request.

Additionally, commenters may send a copy of their comments to the OMB desk officer for the agencies by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: For further information about the regulatory reporting requirements discussed in this notice, please contact any of the agency clearance officers whose names appear below. In addition, copies of reporting schedules and instructions can be obtained from the FFIEC's Web site.[2]

OCC: Mary Gottlieb, OCC Clearance Officer (202–874–5090), Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Michelle Shore, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551 (202–452–3829). Telecommunications Device for the Deaf (TDD) users may call (202) 263–4869.

FDIC: Valerie Best (202–898–3812), Supervisory Counsel, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: Ira L. Mills at *ira.mills@ots.treas.gov,* (202) 906–6531, or facsimile number (202) 906–6518, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The agencies are requesting OMB approval to implement the following new information collection.

Report Title: Advanced Capital Adequacy Framework Regulatory Reporting Requirements.

Form Number: FFIEC 101.

Frequency of Response: Quarterly.

Affected Public: Business or other for-profit.

OCC

OMB Number: 1557–NEW.

Estimated Number of Respondents: 52 national banks.

Estimated Time per Response: 625 hours.

Estimated Total Annual Burden: 130,000 hours.

Board

OMB Number: 7100–NEW.

Estimated Number of Respondents: 6 state member banks.

Estimated Time per Response: 625 hours.

Estimated Total Annual Burden: 15,000 hours.

OMB Number: 7100–NEW.

Estimated Number of Respondents: 15 BHCs.

Estimated Time per Response: 625 hours.

Estimated Total Annual Burden: 37,500 hours.

FDIC

OMB Number: 3064–NEW.

Estimated Number of Respondents: 19 state nonmember banks.

Estimated Time per Response: 625 hours.

Estimated Total Annual Burden: 47,500 hours.

OTS

OMB Number: 1550–NEW.

Estimated Number of Respondents: 5 savings associations.

Estimated Time per Response: 625 hours.

Estimated Total Annual Burden: 12,500 hours.

General Description of Reports

This information collection is mandatory for banks using the Advanced Capital Adequacy Framework: 12 U.S.C. 161 (for national banks), 12 U.S.C. 324 and 12 U.S.C. 1844(c) (for state member banks and BHCs respectively), 12 U.S.C. 1817 (for insured state nonmember commercial and savings banks), and 12 U.S.C. 1464 (for savings associations). This information collection will be given confidential treatment (5 U.S.C. 552(b)(4)) except for selected data items (Schedules A and B, and data items 1–2 of the operational risk Schedule S) that will be released for reporting periods after an institution has successfully completed its parallel run period and is qualified to use the advanced approaches for regulatory capital purposes. The agencies will not publicly release information submitted during an entity's parallel run period.

Abstract

Each bank that qualifies for and applies the advanced internal ratings-based approach to calculate regulatory credit risk capital and the advanced measurement approaches to calculate regulatory operational risk capital, as described in the final rule, is required to file quarterly regulatory data. The agencies will use these data to assess and monitor the levels and components of each reporting entity's risk-based capital requirements and the adequacy of the entity's capital under the Advanced Capital Adequacy Framework; to evaluate the impact and competitive implications of the Advanced Capital Adequacy Framework on individual reporting entities and on an industry-wide basis; as one input to develop an interagency study at the end of the second transitional floor period as described more fully in the final rule implementing the Advanced Capital Adequacy Framework; and to supplement on-site examination processes. The reporting schedules will also assist banks in understanding expectations around the system development necessary for implementation and validation of the Advanced Capital Adequacy Framework. Submitted data that is released publicly following a reporting entity's parallel run period will also provide other interested parties with information about banks' risk-based capital.

Current Actions

Risk-Based Capital Standards: Advanced Capital Adequacy Framework: Regulatory Reporting Requirements

I. Background

On September 25, 2006, the agencies issued for comment a joint notice of proposed regulatory capital reporting requirements (71 FR 55981) for U.S. banks that qualify for and adopt the advanced internal ratings-based (AIRB) approach for calculating regulatory credit risk capital and the advanced measurement approaches (AMA) for

[2] *http://www.ffiec.gov/ffiec_report_forms.htm.*

calculating regulatory operational risk capital (together, the advanced approaches). These proposed regulatory reporting requirements were issued concurrently with the joint notice of proposed rulemaking seeking public comment on a new risk-based capital framework for banks (71 FR 55830). On December 7, 2007, the agencies published final rules implementing the new risk-based capital framework (72 FR 69288). This notice describes the final risk-based capital reporting requirements for banks that qualify for and adopt the new risk-based capital framework or are in the parallel run stage of qualifying to adopt this framework.

Data items contained within the reporting proposal pertained to the risk parameters and drivers of a bank's regulatory capital measures under the AIRB and AMA approaches. The reporting proposal identified a number of uses for the data to be submitted, which included the ability of the agencies to monitor risk-based capital requirements, assess the components of these requirements, evaluate the impact of implementing the new advanced approaches, and supplement on-site examination processes relating to the implementation of the new advanced approaches. The proposal also indicated that certain summary information would be made available to the public for reporting periods after a bank has qualified to use the advanced approaches for regulatory capital to provide a sufficient degree of public disclosure to market participants.

The agencies have evaluated comments received on the reporting proposal and have made changes to the reporting requirements as described below. Certain changes to the reporting requirements, collected data elements, and reporting instructions have also been made to conform reporting to changes made to the final rule.

II. Comment Overview

The agencies received sixteen comment letters that directly addressed the reporting proposal. In addition to providing responses to the specific questions posed by the agencies, a number of commenters identified both general and technical issues relating to the reporting requirements, report schedules, and reporting instructions. Some additional comments focused primarily on the Pillar 3 disclosure requirements of the joint notice of proposed rulemaking, but also included less specific comments on regulatory reporting.

In general, commenters reflected concerns over the perceived burdens of the proposed reporting requirements without sufficient offsetting benefits in terms of the analytical needs of supervisors and the information needs of investors and other public users of financial information. Specific areas of concern identified in the comments covered a range of issues including concerns about (1) the length of time allowed following a quarter-end to file reports with the agencies, (2) public disclosures of certain risk estimates used to calculate risk-weighted assets for credit risk portfolios, (3) public disclosures of certain data items contained in the operational risk schedule, (4) the reporting of credit risk portfolios not defined in the proposed rulemaking, (5) the reporting of data elements not required for calculation of regulatory capital, and (6) potential duplication or inconsistencies of the reporting requirements with Pillar 3 disclosures.

The agencies have made a number of modifications to the reporting requirements in light of these comments. Among the changes that address concerns about reporting burden, the agencies have eliminated three schedules and approximately 600 reportable data items, expanded the submission deadlines during a bank's parallel run period, and allowed more data items to be reported on an optional basis (depending on information availability, e.g., information pertaining to pre-credit risk mitigation risk estimates for wholesale exposures when the substitution approach is used, and various data items pertaining to operational risk modeling). Additionally, in recognition of concerns about report certification requirements, the agencies have adopted alternative certification language that focuses on meeting the requirements imposed by the final rule and reporting instructions as opposed to a statement attesting to the accuracy of data items that include parameter estimates.

The reporting proposal raised three specific questions for industry's consideration. First, the agencies asked about the feasibility of collecting additional information to help isolate the causes of changes in regulatory credit risk-based capital requirements (the lookback portfolio approach). The agencies have decided not to pursue the collection of this additional information at this time but intend to explore with the industry in the future ways to facilitate such analyses. Second, the agencies asked about the desirability of using an alternative approach to fixed bands for reporting wholesale and retail schedules. Although the majority of commenters favored the alternative approach, the agencies have decided to retain the fixed band approach to achieve greater comparability among reporting banks. Third, the agencies asked about the appropriateness of making certain data items available to the public for reporting periods subsequent to a bank's parallel run period. With the exception of certain information contained in the operational risk schedule (data items 3 through 7 of this schedule), the agencies have decided to continue to require public disclosure of all other data items contained in Schedules A and B, and data items 1 and 2 only of the operational risk schedule, for reporting periods after a bank has qualified to use the advanced approaches for regulatory capital purposes. The agencies believe that such disclosures are consistent with Pillar 3 of the Advanced Capital Adequacy Framework and will provide useful information to investors and other market participants about a bank's capital structure, risk exposures, and main components of a bank's regulatory capital calculations. As in the reporting proposal, all other information submitted per these reporting requirements will remain confidential.

One commenter also indicated its belief that the burden estimate provided in the reporting proposal of 280 hours per respondent was significantly understated. Although the final reporting requirements require submission of significantly less data items than under the reporting proposal, the agencies have revised their estimates of reporting burden on a per respondent basis upward in recognition of reporting burdens incurred by banks on other types of regulatory reports and the level of detail required to be submitted under these reports.

Certain other modifications, such as the elimination of data items relating to expected loss given default, were made to conform the reporting requirements and instructions to the final rule. A complete discussion of comments, and changes made to the reporting requirements, is contained in the following sections.

III. Scope and Frequency of Reporting

Banks That Are Required To Submit Reports

The reporting requirements associated with the final rule will apply, as proposed, to each BHC, on a consolidated basis, and each depository institution that qualifies for and applies the advanced approaches (section I of the final rule provides a detailed discussion of institutions covered by these reporting requirements), as well as

banks in the parallel run stage of qualifying to use the advanced approaches. The agencies did not receive any comments objecting to the scope of application of these reporting requirements as stated.

Frequency of Reports

As proposed, the reports described herein are to be submitted to the agencies on a quarterly basis. The agencies did not receive comments that generally opposed quarterly reporting. However, as discussed below, some commenters argued for less frequent or lagged reporting of certain data elements relating to operational risk.

Reporting Due Dates

A number of commenters raised concerns over the proposed requirement to align reporting due dates with those currently required for banks, savings associations, and BHCs that file Consolidated Reports of Condition and Income (Call Reports), Thrift Financial Reports (TFRs), and BHC FR Y–9C reports, respectively. These commenters offered a range of alternative reporting deadlines but generally argued for extended deadlines through at least the parallel run and transitional floor periods. The agencies agree that it is reasonable to extend reporting deadlines through the parallel run period to 60 days following the end of a quarter. However, the agencies believe that once a bank qualifies to use the advanced approaches and enters the transitional floor period, the bank should have the ability to fully support regulatory capital calculations to coincide with the timing of other financial disclosures. Accordingly, after a bank's parallel run period, the agencies are requiring submission of the information required by this notice within the same timeframes set forth in the reporting instructions for the Call Report, TFR, and BHC FR Y–9C filed by banks, savings associations, and BHCs, respectively.

Report Certification Requirements

Under the reporting proposal, banks would be required to meet the same reporting standards that are applied to other regulatory reports including certification by a bank's Chief Financial Officer attesting to the correctness of the reports. While acknowledging the reasonableness of requiring certifications of reported information, one commenter raised concerns over certifications of the accuracy of risk parameter estimates and the procedures used to validate those estimates. In recognition of these concerns, the agencies have modified the certification requirements for this regulatory report submission. These report certifications are substantially similar to those required for banks' Pillar 3 disclosures in that they require one or more senior officers of the reporting entity to attest that the risk estimates and other information submitted to the agencies meet the requirements set forth in the final rule and reporting instructions.

Initial Reporting Period

For those banks subject to these reporting requirements, the first reporting period (as proposed) will correspond to the quarter-end of the first quarter of a bank's parallel run period. Although no commenters objected to this requirement, some commenters did raise concerns over the ability to implement those systems changes necessary to meet these reporting requirements without a sufficient amount of time between publishing these requirements and the first reporting period. The agencies are mindful of the tight timeframes for banks whose first reporting period corresponds to the quarter-end following the effective date of the final rule. The agencies expect that systems development will be an iterative process during the parallel run period, with steady improvement in overall reporting and gradual reduction of manual processes prior to qualification.

Relationship to Other Regulatory Reporting of Risk-Based Capital

As proposed, banks subject to these reporting requirements will submit capital information under both this notice and under the existing risk-based capital reporting requirements (the general risk-based capital rules) during their respective parallel run periods and subsequent transitional floor periods.[3] A bank would discontinue reporting under the general risk-based capital rules once it is permitted to exit its third transitional floor period. The agencies received no comments on this requirement.

Electronic Submission of Reports

Consistent with requirements for the agencies' reports which collect data under the existing risk-based capital reporting requirements, banks subject to these reporting requirements must submit these reports in an electronic format using file specifications and formats determined by the agencies.

IV. Overview of the Data Reporting Requirements

The reporting proposal contained 22 separate schedules: One schedule (Schedule A) detailing banks' capital elements (the numerator of the risk-based capital calculation); one schedule (Schedule B) that summarizes the components of risk-weighted assets for categories of credit risk portfolios, operational risk exposures, and market risk; and 20 schedules (Schedules C through V) that provide additional detail on the risk parameters and drivers of credit risk-weighted and operational risk-weighted assets. For wholesale and retail credit exposures, the reporting schedules contain information on the risk parameters used in specific risk-based capital formulas to determine risk-weighted asset amounts, namely: Probability of default (PD, which measures the likelihood that an obligor will default over a one-year horizon); loss given default (LGD, which is an estimate of the economic loss if a default occurs during downturn economic conditions); exposure at default (EAD, which is measured in dollars and is an estimate of the amount that would be owed to the bank at the time of default); and, for wholesale credit exposures, an exposure's effective maturity (M, which is measured in years and reflects the effective remaining maturity of the exposure). The retail credit risk schedules also include information on loan-to-values, credit bureau scores, and account seasoning, which are likely to be important risk drivers within these portfolios. For securitization, equity, and operational risk exposures, the reporting schedules include data on the main inputs to, and outputs of, internal models and regulatory risk weight functions used to determine risk-weighted assets for these exposures.

Several commenters raised concerns about burdens associated with and the need for reporting of certain types of credit exposures not explicitly defined outside the reporting proposal. These exposure types include Construction Income Producing Real Estate (IPRE) and Other Retail Exposures—Small Business. In response to industry concerns, the agencies have consolidated several schedules. Specifically, the final reporting requirements consolidate reporting of Construction IPRE and non-construction IPRE exposures into one IPRE schedule (new Schedule F), consolidate reporting

[3] General risk-based capital data under the existing risk-based capital standards are currently captured in the Consolidated Reports of Condition and Income (Call Report) for banks (Form FFIEC 031 or FFIEC 041); OMB No. 1557–0081 for the OCC, 7100–0036 for the Board, and 3064–0052 for the FDIC), the Thrift Financial Report (TFR) for savings associations (OTS Form 1313; OMB No. 1550–0023), and the Consolidated Financial Statements for Bank Holding Companies (Board Form FR Y–9C; OMB No. 7100–0128).

of Qualifying Revolving Exposures—Credit Cards and Qualifying Revolving Exposures—All Other into one Qualifying Revolving Exposure schedule (new Schedule N), and consolidate reporting of Other Retail Exposures—Small Business and Other Retail Exposures—All Other into one Other Retail Exposure schedule (new Schedule O). With these schedule consolidations, the final reporting requirements require the submission of 19 schedules instead of the 22 schedules contained in the reporting proposal.

A. Publicly Available Risk-Based Capital Data for the Advanced Approaches

Content of Schedules A and B

Schedule A contains information about the components of Tier 1 and Tier 2 capital, as well as adjustments to regulatory risk-based capital as defined in the final rule. Certain modifications were made to data item captions, schedule footnotes, and instructions for clarification purposes and to conform the reporting requirements to the final rule. More specifically, in Part 1 of Schedule A for banks and BHCs, data item 6b, ''Qualifying trust preferred securities,'' as well as the deduction in data item 7b, ''*LESS:* Cumulative change in fair value of all financial liabilities accounted for under a fair value option that is included in retained earnings and is attributable to changes in the bank's own creditworthiness,'' were added to derive the appropriate numerator for the Tier 1 risk-based capital calculation. In addition, the deductions in data items 10a and 16a, ''*LESS:* Insurance underwriting subsidiaries' minimum regulatory capital (for BHCs only)'' were added to conform to the final rule and are necessary to derive the numerator for both the Tier 1 and Tier 2 risk-based capital calculation. A number of proposed data items relating to the regulatory leverage capital ratio were also eliminated from Part 1 of the schedule because they are reported in other regulatory reports.

Schedule B contains summary information about risk-weighted assets by exposure categories, and for credit risk exposures, outstanding balances and aggregated information about the estimates that underlie the calculation of risk-weighted assets. The information in Schedule B is largely unchanged from the reporting proposal with some minor modifications. The modifications include: (1) The addition of data item 24 for unsettled transactions (balance sheet amount and risk-weighted assets) in response to industry comments, (2) the addition of data item 28 for the calculation of total credit risk-weighted assets scaled by the 1.06 multiplier contained in the final rule, (3) the addition of data item 29 to recognize risk-weighted asset deductions for excess eligible credit reserves not included in Tier 2 capital (to be consistent with paragraph (a)(2) of section 13 of the final rule), (4) the elimination of three data items for exposure types whose reporting has been consolidated with other exposure types as described above, and (5) changes to various caption headings to align them with the descriptions and definitions contained in the final rule.

The agencies received the following technical comments on data elements contained in Schedule B, Summary of Risk Weighted Assets for Banks Approved to Use the Advanced Approaches:

- Several commenters recommended re-labeling line 30 in the reporting proposal from Immaterial Exposures to Credit Exposures on Other Methods. These commenters argued that a broader exposure category was needed for the inclusion of unsettled securities transactions and other exposures where it is not feasible to estimate risk parameters under the advanced approaches. The agencies have modified Schedule B to include a separate data item for reporting the balance sheet amounts and risk-weighted assets associated with unsettled transactions (data item 24). The agencies note that the final rule specifically addresses and defines credit exposures that are not included within a defined exposure category, as well as non-material portfolios of exposures. Schedule B has been modified to include reporting of the risk-weighted assets and balance sheet amounts for these categories of exposures as described in the final rule;
- Several commenters sought clarification that the Expected Credit Loss (ECL) column in Schedule B should be reported after considering credit risk mitigation (CRM) effects. The agencies confirm that all ECL data items within the reporting schedules are to be reported on a post-CRM basis; and
- One commenter requested revisions to Schedule B to allow for agreement between aggregated credit portfolio (balance sheet) information and amounts listed in other regulatory reports such as Call Reports and the BHC FR Y–9C report. The agencies acknowledge the desired objective conveyed by this commenter to ensure that regulatory capital calculations encompass all exposures within a bank. However, the agencies believe it is more important to delineate exposures by exposure categories (and subcategories) as defined within the final rule since each of these exposures is associated with a specific set of risk weight curves, risk weight functions, or calculation approaches. As a result, the agencies have decided not to redefine exposure categories to be consistent with those defined within other regulatory reports. The agencies have also decided not to impose additional burden of reconciling the financial information contained in these reports to balance sheet information contained in other regulatory reports. Rather, the agencies believe that the comprehensiveness of these reports can be confirmed through other means such as on-site reviews.

Publicly Available Information

The agencies received a number of comments relating to the public disclosure of information reported in Schedules A and B, and data items 1 through 7 of the Operational Risk schedule. These commenters argued for limited or phased-in disclosure of Schedule B data items in particular, limiting disclosure of Schedule B data items to risk-weighted assets by exposure type and related on- and off-balance sheet amounts, or flexibility in timing of submissions when an institution views certain information as proprietary in nature. These commenters generally argued that components of the risk-weighted asset calculation such as PD, LGD, and EAD are not well understood, are incomplete measures of risk, are not comparable across institutions, and may be subject to misinterpretation by investors and other market participants.

After consideration, the agencies have decided to retain public disclosure of all data items in Schedules A and B (as modified) for reporting periods after a bank has qualified to use the advanced approaches for regulatory capital purposes (i.e., once a bank enters its first transitional floor period). All reported information will remain confidential during the bank's parallel run. The agencies believe such disclosures, at the bank level, are consistent with the Advanced Capital Adequacy Framework and will provide useful information to investors and other market participants about a bank's capital structure, its risk exposures, and the main components and risk drivers underlying the bank's regulatory capital calculations. Although the agencies agree with industry comments that care must be taken in making comparisons of aggregated risk parameters across institutions, the agencies note that comparability concerns have been substantially reduced by changes made to the final rule (such as the elimination

of expected loss given default or ELGD and the adoption of the New Accord's definition of default for wholesale credit exposures). As with the Pillar 3 disclosure requirements, the agencies believe public disclosure of the information in Schedules A and B is consistent with the objectives of market discipline and transparency advanced within the final rule and will provide investors and other market participants with a basic set of summary-level standardized information about the main components of banks' risk-based capital requirements. As noted in the proposed reporting requirements, banks may be able to use certain data items in these disclosures to augment Pillar 3 disclosures required by the final rule.

Data items 1 and 2 only of the operational risk schedule (Schedule S), will also be made publicly available for reporting periods after a bank has qualified to use the advanced approaches for regulatory capital purposes (i.e., once an institution enters into its first transitional floor period). This requirement is a modification of the reporting proposal, which proposed making data items 1 through 7 of this schedule publicly available along with information in Schedules A and B. A number of commenters raised concerns that data items 3 through 7 of the operational risk schedule contain proprietary or sensitive information. In light of these comments, the agencies have reevaluated whether these data elements are appropriate for public disclosure and have concluded they are not. Therefore, all operational risk schedule data items with the exception of data items 1 and 2 will remain confidential. Commenters generally agreed that data items 1 and 2 of this schedule were appropriate for public disclosure.

B. Non-Publicly Available Risk-Based Capital Data for the Advanced Approaches

With the exception of data items 1 and 2 in Schedule S, information submitted in Schedules C through S will be shared among the four agencies but will not be released to the public. The data elements contained in these schedules will provide the agencies with additional, aggregated detail about the components and main drivers of reporting banks' risk-based capital levels. The agencies will use this information to help focus on-site supervisory examination efforts by facilitating off-site monitoring of banks' regulatory capital calculations and regulatory capital trends, and to facilitate peer comparisons of capital and capital risk estimation parameters.

Reporting of Credit Risk by Fixed Supervisory Bands

For the wholesale and retail credit portfolios (Schedules C through O), aggregated information is reported at the level of fixed supervisory PD bands as defined within the reporting proposal. The agencies received a number of comments on the use of supervisory PD bands for purposes of aggregating information in the wholesale and retail schedules (question 2 of the reporting proposal). Most commenters indicated such aggregations would impose reporting burdens over an alternative approach discussed in the reporting proposal that would have allowed banks to report information by internal loan grades and internal segments. One commenter indicated indifference to the two reporting approaches for wholesale exposures. However, this latter commenter indicated that reporting of retail exposures by fixed PD bands would be more practical since reporting by internal segments could be unwieldy, given the large number of possible segments and segmentation schemes within a given bank, and would reduce, if not eliminate, comparability. One commenter supported reporting by fixed PD band and suggested that reporting burdens could actually increase to achieve comparability under the alternative approach.

The agencies have considered these comments and have decided to retain reporting by fixed supervisory PD bands as presented in the reporting proposal. While the agencies acknowledge some incremental reporting burden related to this approach, the agencies believe this reporting format achieves the desired objective of facilitating peer comparisons of risk-weighted asset and risk parameter estimation information. Moreover, the agencies believe that the alternative approach could introduce incremental reporting burdens over the adopted approach given the need to develop rules for combining and aggregating the large number of possible segmentation schemes used by banks.

Lookback Portfolio Reporting

The agencies also received many comments opposing the data collection alternative presented in question 1 of the reporting proposal. This alternative involved collecting additional information to help identify causes of changes in credit risk regulatory capital requirements (the lookback portfolio proposal). Commenters were strongly opposed to this alternative, citing significant additional reporting burdens and concerns about the lack of specificity of the alternative. Many of these same commenters indicated that changes in regulatory capital could be better and more efficiently identified through alternative processes such as on-site reviews. After considering these comments, the agencies have decided at this time not to require submissions of the additional information suggested by this alternative lookback reporting proposal.

The agencies continue to see merit in being able to identify whether changes in a bank's assessment of risk are due to changes in the mix of exposures held or due to changes in risk assessments. As a result, the agencies intend to publish a proposal for comment that would facilitate such analyses. This notice would identify safety and soundness issues that could be addressed by additional data items contained in the proposal as well as other alternatives beyond a formal reporting process for obtaining this information. Comments received on this proposal will directly influence the agencies' decision whether to collect additional information beyond what is contained in the reporting requirements contained in this notice.

Wholesale Exposures

Data reported in Schedules C through J include information about the risk-weighted assets, balance sheet exposures, number of obligors, and main components or aggregated risk parameter estimates of the risk-based capital calculation for wholesale credit exposures. Each schedule represents a sub-portfolio of the wholesale exposure category and each portfolio corresponds to a data item on the summary Schedule B. The wholesale sub-portfolios are as follows: Corporate (Schedule C); Bank (Schedule D); Sovereign (Schedule E); Income Producing Real Estate or ''IPRE'' (Schedule F); High Volatility Commercial Real Estate or ''HVCRE'' (Schedule G); Eligible Margin Loans, Repo-Style Transactions, and OTC Derivatives with Cross-product Netting (Schedule H); Eligible Margin Loans and Repo-Style Transactions without Cross-product Netting (Schedule I); and OTC Derivatives without Cross-product Netting (Schedule J). As discussed above, exposures reported in these schedules are to be grouped into more detailed sub-portfolio segments using the fixed supervisory PD bands.

Several commenters raised concerns about the reporting proposal's requirement to calculate and disclose the impact of guarantees and credit derivatives on risk-weighted assets for wholesale exposures. These commenters indicated that such a requirement would impose significant burden on

institutions whose current practice is not to maintain separate risk information for obligors and guarantors on certain exposures. Some of these commenters suggested an alternative reporting approach that would require reporting of the EAD amounts associated with exposures where risk is mitigated by guarantees or credit derivatives.

The agencies have considered these comments and note that similar concerns were raised with respect to the application of the substitution approach described in the agencies' proposed rule. For reporting, the agencies have revised the reporting instructions relating to credit risk mitigation to conform to the final rule. Specifically, banks need not calculate and report the impact of guarantees and credit derivatives on risk-weighted assets where a bank extends credit based solely on the financial strength of a guarantor, provided the bank applies the PD substitution approach to all exposures of that obligor. The agencies believe that this modification to the reporting instructions should alleviate much of the concern expressed in the comments since reporting the effects of credit risk mitigation on risk-weighted assets would be required only in those situations where the bank is required by the final rule to maintain separate internal risk ratings for a wholesale obligor and the guarantor or credit provider under a credit derivative. The agencies note that reporting under the double default approach is not affected by this modification since separate internal risk ratings are a necessary requirement to calculate regulatory risk-based capital using this approach. In those cases where it is feasible to do so, the agencies are retaining the approach contained in the reporting proposal to require institutions to report the impact of credit risk mitigation on risk-weighted assets rather than adopt the suggestion made in some comments to report the EAD related to exposures eligible for the substitution, LGD adjustment, or double default approaches.

One commenter also questioned the need for a separate column for the weighted average LGD percentage before consideration of guarantees and credit derivatives, arguing that banks have little incentive to use the LGD adjustment approach since adjustment is subject to a floor based on the PD substitution approach (i.e., the risk-based capital requirement for a hedged exposure can never be lower than that of a direct exposure to the protection provider). Notwithstanding any disincentives to using the LGD adjustment approach, banks subject to the advanced approaches have the option of using this approach to reduce capital requirements against hedged wholesale exposures. Therefore, the agencies have decided to retain these columns in the wholesale schedules. The agencies intend to reevaluate the need for this information in light of actual submissions.

The agencies received the following technical comments relating to data to be reported in Schedules C through J:

- Two commenters indicated possible confusion in Schedule E of where to reflect the impact of sovereign guarantees since such guarantees often are used to reduce corporate exposures, not sovereign exposures. These commenters noted that the confusion could be eliminated by adopting a recommendation to report the EAD of exposures eligible for the substitution, LGD adjustment, or double default approaches. In response, the agencies have modified the reporting instructions to indicate that while banks should generally use the underlying obligor as the basis for categorizing wholesale credit exposures, the categorization of wholesale exposures may be determined by the guarantor in cases where a PD is not assigned to the obligor;
- One commenter sought clarification of the term ''Number of Obligors'' listed as a column in Schedules C through G under the following scenarios: (i) When a bank has multiple facilities outstanding to one borrower; (ii) when a bank lends to both a subsidiary and to a parent of that same facility; and (iii) when a bank has two exposures to an obligor, one with no guarantee and the other with a guarantee. The agencies note that similar comments were received with respect to the internal risk rating assignment process described in the proposed rule and that a formal definition for obligor was adopted in the final rule as a result. For reporting purposes, banks should apply this same definition when determining how to quantify the number of obligors to report in Schedules C through G; [4]
- One commenter sought clarification that exposures reported in the new Schedules I and J include transactions not subject to cross-product netting but may be subject to single-product netting. The agencies confirm this interpretation; and
- One commenter indicated that the PD ranges for the reporting of eligible margin loans, repo-style transactions, and OTC derivatives (new Schedules H through J) should be consistent with the PD ranges contained in other wholesale schedules. The agencies believe that the different PD ranges for exposures in these schedules, which contain a larger number of lower-risk PD bands, will likely result in more meaningful reported distributions of exposures across the credit quality spectrum for these sub-portfolios. Accordingly, the agencies have decided to retain the PD bands as proposed. However, to capture a larger range of low-risk exposures and achieve better comparability across exposure categories, the agencies have also decided to widen one of the PD bands and align the end points of two PD bands with those in other wholesale credit schedules. Specifically, the PD band for line 2 on these schedules was widened to 0.03 to 0.10 (from 0.03 to 0.05 in the reporting proposal); and the PD bands for lines 3 and 4 were changed to 0.10 to 0.15 and 0.15 to 0.25, respectively (from 0.05 to 0.10 and 0.10 to 0.25, respectively).

The agencies made two additional clarifications in the instructions to the wholesale exposure Schedules C through J to conform reporting to the final rule. Both of these clarifications relate to the basis for assigning exposures to the fixed supervisory PD bands specified within each wholesale exposure schedule. Generally, these assignments should be based on the PD estimates associated with the internal loan rating assigned to the obligor. However, consistent with the final rule, an exception is made in cases where the bank extends credit based solely on the financial strength of the guarantor provided that all of the bank's exposures to an obligor are fully covered by eligible guarantees and the bank applies the PD substitution approach to all of those exposures. In these cases, banks may use the PD estimate associated with the internal loan grade assigned to the guarantor for purposes of assigning exposures to a given fixed supervisory PD band. Another exception is made for eligible purchased wholesale exposures

[4] The final rule defines an obligor as the legal entity or natural person contractually obligated on a wholesale exposure except that a bank may treat the following exposures as having separate obligors: (1) Exposures to the same legal entity or natural person denominated in different currencies; (2)(i) an income-producing real estate exposure for which all or substantially all of the repayment of the exposure is reliant on cash flows of the real estate serving as collateral for the exposure; the bank, in economic substance, does not have recourse to the borrower beyond the real estate serving as collateral; and no cross-default or cross-acceleration clauses are in place other than clauses obtained solely out of an abundance of caution; and (ii) other credit exposures to the same legal entity; and (3)(i) a wholesale exposure authorized under section 364 of the U.S. Bankruptcy Code (11 U.S.C. 364) to a legal entity or natural person who is a debtor-in-possession for purposes of Chapter 11 of the Bankruptcy Code; and (ii) other credit exposures to the same legal entity or natural person.

(as defined in the final rule). For these exposures, banks should use segment-level risk estimates for purposes of assigning exposures to a given fixed supervisory PD band.[5] This treatment is consistent with paragraph (d)(4) of section 31 of the final rule.

The agencies made the following additional modifications to Schedules H, I, and J: (1) To conform reporting to the final rule, the agencies added a data item 13 to columns C and E in Schedules H and I to capture the EAD and risk-weighted asset amounts associated with eligible margin loans subject to a 300 percent risk weight, (2) data items for reporting the number of counterparties were eliminated from all three schedules, and (3) certain captions and footnotes were modified for clarity and to conform to the terminology used in the final rule.

Retail Exposures

Data reported in Schedules K through O include information about the risk-weighted assets, balance sheet exposures, the number of accounts, and the main components or risk parameters of the risk-based capital calculation for retail credit exposures. These schedules also incorporate information pertaining to risk characteristics believed to be commonly used drivers within banks' risk management and measurement processes, to include information on loan-to-values, credit bureau scores, and account seasoning. Each schedule represents a sub-portfolio of the retail exposure category and each portfolio corresponds to a data item on the public Schedule B. These retail sub-portfolios are as follows: Residential Mortgage—Closed-end First Lien Exposures (Schedule K); Residential Mortgage—Closed-end Junior Lien Exposures (Schedule L); Residential Mortgage—Revolving Exposures (Schedule M); Qualifying Revolving Exposures (Schedule N); and Other Retail Exposures (Schedule O). As with the wholesale credit schedules, exposures reported in these schedules are to be grouped into more detailed sub-portfolio segments using the fixed supervisory PD bands.

Many commenters objected to the inclusion of information pertaining to loan-to-values (LTV) and EAD of accounts with updated LTVs for mortgage exposures. These commenters indicated in general that this risk driver information was not necessary for determination of risk-based capital requirements, is not always used in a bank's segmentation processes, and is not always readily available and therefore potentially burdensome to collect (particularly information pertaining to updated LTVs). The agencies note that the instructions accompanying the reporting proposal required reporting of LTV-related information only to the extent the information is available. The agencies continue to believe that LTV is likely to be an important risk driver for mortgage exposures and will be used by many institutions in the mortgage segmentation process. Several commenters also questioned the collection of weighted average bureau scores, and the names and types of credit scoring systems used, for retail exposures. These commenters indicated in general that this risk driver information was not necessary for determination of risk-based capital requirements, is not always used in a bank's segmentation processes, and may not be meaningful for banks that use internal scores or behavioral scores in their risk measurement and segmentation processes. Some commenters also indicated that some scoring systems (for example, non-U.S. scores) would not align with each other, making the calculation of weighted averages either incomplete or potentially misleading. The agencies note that the instructions accompanying the reporting proposal required reporting of credit bureau score information only to the extent the information is available, and only for commonly-mapped scoring systems used for the largest proportion of exposures in a sub-portfolio when multiple scoring systems are used. The agencies continue to believe that credit bureau scores are likely to be an important risk driver for many types of retail exposures and will be used by many institutions in their retail segmentation processes.

Some commenters also raised concerns about reporting the age of mortgage exposures. These commenters indicated that this information is not always used to segment mortgage loan exposures and that there could be a number of possible ways to interpret the term ''average age'' used to calculate the weighted average age of a mortgage exposure depending on whether the loan was originated or purchased. These commenters indicated that it would be significantly burdensome to determine months since origination for purchased loans and sought confirmation that the number of months on books could be used instead. The agencies believe that loan seasoning is likely to be an important risk driver for many types of retail exposures, especially for closed-end mortgage exposures. Accordingly, for closed-end mortgages, the agencies are retaining the definition of account age, which requires that banks determine the age of an account (in months) with respect to the account's origination date. For revolving exposures, the agencies agree that account age (in months) should be determined with respect to the time on the bank's books. For all other retail exposures, the agencies will allow banks the flexibility to determine the age of an account using a reference point deemed most logical by the reporting bank.

The agencies received the following technical comments relating to data to be reported in Schedules K through O:

- Two commenters indicated that it was not a common practice to include both junior and senior lien positions in the calculation of LTVs when only the senior lien position was held. These comments recommended that only senior lien positions be included in the calculation for first lien exposures. The agencies agree with this comment and have revised the footnotes and instructions for first lien mortgage exposures accordingly;
- A commenter sought confirmation that LTV cell values do not cumulate across the columns. The agencies confirm that the LTV cell values do not cumulate across the columns and have reworded the appropriate footnotes in the mortgage schedules; and
- A commenter indicated that if LTV reporting is retained, an additional column should be added to encompass exposures where the LTV is unknown. Since the reporting of LTV information is required only when the information is available, the agencies do not believe it is necessary to collect information pertaining to exposures with unknown LTVs.

After further consideration, the agencies have made an additional modification to the retail credit risk schedules to eliminate all columns requiring the reporting of weighted average LGD before consideration of eligible guarantees and credit derivatives. The agencies believe that the quantification of this data item could have imposed an excessive burden on banks since it would have required disentangling the effect of credit risk mitigation on LGDs assigned to a retail segment. Accordingly, the LGD estimates reflected in all retail credit exposure schedules should be inclusive of any credit risk mitigation effects.

[5] Reporting of other risk parameters (LGD, EAD, M, and ECL) for eligible purchased wholesale exposures should also be done on a segment-level basis.

Securitization Exposures

Schedule P provides information by rating categories about exposures subject to either the Ratings-Based Approach (RBA) or the Internal Assessment Approach (IAA). Schedule Q provides additional memoranda information about unrated securitization exposures, exposures treated under the Supervisory Formula Approach (SFA), synthetic securitizations, and risk-weighted assets relating to early amortization features of securitizations as prescribed in the final rule.

The agencies did not receive any substantive comments on the securitization exposure schedules but did receive the following technical comments:

- One commenter requested clarification on how to report long-term securitization exposures rated more than one category below investment grade, and short-term securitization exposures rated below the third highest grade. The agencies have clarified reporting instructions to indicate that such exposures are not to be reported in Schedule P. These low-rated exposures are to be included in the appropriate data items of Schedule A (lines 9f and 17c);
- One commenter requested clarification about the possible inconsistency of reporting between data items 1 and 2 on the securitization detail schedule (new Schedule Q) and data item 5 of schedule for securitization exposures subject to either the RBA or IAA (Schedule P). As described below, the agencies have made a number of modifications to the securitization detail schedule to improve the consistency and logical flow of the schedule as well as to conform reported data items and captions with the final rule; and
- Multiple comments were received about the burdens associated with calculating the risk-weighted assets for securitization exposures not capped under section 42(d) of the final rule (data item 6b of Schedule T in the reporting proposal). The agencies have removed this data item from the new Schedule Q.

The following additional modifications were made to the securitization detail schedule (new schedule Q) to more comprehensively capture securitization deductions specified in the final rule and to consolidate certain data items on the schedule: (1) Data item 1 was added to require reporting of deductions under the RBA and IAA approaches; (2) proposed data item 1, ''unrated exposures requiring deduction because no IRB treatment for the underlying exposures,'' was replaced by data item 2, requiring reporting of all other securitization deductions; (3) proposed data item 2, deductions under the SFA, was consolidated with proposed data item 3 requiring reporting of exposures and risk-weighted assets for this approach (see data item 3); (4) reporting of exposures and risk-weighted assets of synthetic exposures and hedged synthetic exposures on proposed data items 4 and 5 were consolidated into one line (see data item 4); and (5) the captions for proposed data items 7 and 8, relating to investors' interest in securitization, were modified to conform to the terminology used in the final rule.

Equity Exposures

Data reported in Schedule R contains exposure amount and risk-weighted asset information about a bank's equity exposures by type of exposure and by approach to measuring required capital including equity exposures subject to specific risk weights and equity exposures to investment funds. Banks would also complete the appropriate section of the schedule based on whether it uses a simple risk weight approach, a full internal models approach, or a partially modeled approach to measuring required capital for equity exposures.

The agencies received the following technical comments on the equity risk schedule:

- Two commenters indicated that the flow of the schedule's sections was confusing and recommended that the schedule be redesigned. These commenters also requested clarification of reporting for certain data items such as equity investments in investment funds that have material liabilities. In response, the agencies have modified the equity schedule to more closely align with the structure and flow of the equity risk capital calculation approaches contained in the final rule. The agencies have also developed more specific reporting instructions and modified captions of reported data items to conform with the terminology used in the final rule. With respect to the treatment of equity investments in investment funds with material liabilities, the agencies refer to the discussion of such investments in section V.F.4 in the preamble of the final rule.

The agencies made several additional modifications to the equity schedule to simplify reporting and conform data items within the schedule to the final rule. These changes include the following: (i) The elimination of proposed data items 7 and 8, for ''excluded equity exposures to investment funds'' and ''aggregate equity exposures in hedge pairs with smaller adjusted carrying value;'' (ii) the elimination of reporting for the 100 percent risk-weight category for FHLB/Farmer Mac exposures proposed data item 4 (such exposures are risk weighted at 20 percent under the final rule); (iii) the addition of data item 9, ''600 percent risk weight equity exposures under the Simple Risk Weighted Approach (SRWA)'' to conform with the final rule; (iv) the addition of data item 14 for reporting exposures to investment funds eligible for treatment under the Money Market Fund Approach defined within the final rule; and (v) splitting proposed data items 13, 18, and 22 to better conform with the logical flow of the calculation of risk-weighted assets for equity exposures under the final rule using one of three different approaches: the SRWA, the full Internal Models Approach (IMA), or the partial IMA.

Operational Risk

The new Schedule S provides data items pertaining to risk-based capital held against operational risk as well as various details about historical operational losses used to model operational risk capital. The schedule also contains data items related to scenarios, distribution assumptions, and loss caps used to model operational risk capital.

The agencies received several comments objecting to quarterly disclosures of certain data contained in the proposed operational risk schedule, particularly those disclosures pertaining to the disclosure of historical loss event frequency and severity information. These commenters indicated that such disclosures were contrary to the principles outlined in the Basel Committee's New Accord and represented only a portion of information that is used to develop regulatory capital for operational risk. After considering these comments, the agencies have made several modifications to the reporting requirements for operational risk data items that includes the elimination of certain data items (i.e., the reporting of current period loss distribution information) and the inclusion of conditional reporting for a number of data items depending on whether a bank uses a given technique (e.g., historical loss distributions or scenario analyses) or parameterization assumption (e.g., loss threshold) to develop regulatory capital requirements for operational risk. In cases where these techniques or

assumptions are not used, banks would report either ''N/A'' or ''0'' (none) for these data items, as discussed in the instructions.

Several commenters also raised a question about which specific subsidiaries the operational risk disclosures would apply to. The agencies believe that all banking subsidiaries that qualify for and adopt the advanced approaches for calculating regulatory capital should be required to submit information about the regulatory capital held against operational risk capital to include certain details about the information used to model operational risk capital. In those situations where a banking subsidiary does not use a specified technique or assumption, it will be allowed to report either ''N/A'' or ''0'' depending on the context of the reported data item.

The agencies received the following technical comments on the operational risk schedule:

• Several commenters requested clarification whether column B in the proposed operational risk reporting schedule refers to the quarterly reporting period for the schedule or for a model that may be annual. The agencies have decided to eliminate column B from the schedule;

• Several commenters requested clarification on how to report starting and ending dates for event loss data when these dates differ for frequency and for severity estimation purposes. The agencies have revised the schedule to request starting and ending dates for both historical frequency and severity distribution data, and only to the extent a bank uses this information to model operational risk capital (see data items 8a through 8d);

• Several commenters requested clarification of how to report loss thresholds in data item 9 of the schedule when multiple thresholds are used within the modeling framework. The agencies have clarified the instructions to require reporting of the largest threshold used;

• Several commenters requested clarification of how to report the number and dollar amount of individual loss events in data items 11 through 15 of the schedule when losses below internal thresholds are aggregated without capturing the number of individual events. Another commenter also requested that banks be allowed to report losses on an event basis rather than a dollar volume basis and that banks be allowed to report such information on a one quarter lagged basis. The agencies have clarified the instructions to specify that a loss event may encompass multiple loss transactions as long as they are all related to the same event. However, losses that do not relate to the same event should be considered separate loss events and should be separately counted for purposes of reporting data items 11 through 15. The instructions have also been clarified to state that reporting of the dollar volume of losses in data item 15 should be calculated on an event basis. In addition, data item 14a for loss events ''less than $10,000'' and data item 15a for the dollar amount of losses ''Less than $10,000'' have been added to provide a comprehensive distribution of loss events. The agencies have eliminated the requirement to report loss event information pertaining to the ''current reporting period'' and therefore see no need to allow banks to report remaining loss event information on a one quarter lagged basis;

• Two commenters requested confirmation that information pertaining to the number of scenarios used to model operational risk capital on data items 16 through 18 referred to the number of relevant industry events. The agencies have clarified the reporting instructions to state that only scenarios used in calculating the risk-based capital requirements for operational risk should be included in these data items. In addition, data item 18a, for scenario analysis in the range of ''less than $1 million'' was added in order to provide a comprehensive distribution of scenario data;

• Several commenters requested clarification of information pertaining to distributional assumptions in data items 20 and 21 as to whether the change in assumptions refers to a change in a parameter of a distribution or a change in the distribution class or type. The agencies have clarified the instructions to specify that the change in assumptions refers to a change in distribution type. Further, no reporting is required when the bank does not use a frequency or severity distribution to model risk-based capital for operational risk; and

• Several commenters requested confirmation that the agencies would accept ''not applicable'' in response to the loss cap information requested in data items 22 through 24 when a bank does not use loss caps. The agencies have clarified the instructions to report the number ''0'' on line 22 and ''N/A'' in lines 23 and 24 when no loss caps are used.

V. Request for Comment

Public comment is requested on all aspects of this joint notice. Comments are invited on:

(a) Whether the proposed new collections of information are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(b) The accuracy of the agencies' estimates of the burden of the proposed information collections, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments submitted in response to this joint notice will be shared among the agencies. All comments will become a matter of public record.

Dated: January 10, 2008.

Stuart E. Feldstein,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

Board of Governors of the Federal Reserve System, January 17, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

Dated at Washington, DC, this 14th day of January, 2008.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Dated: January 17, 2008.

Deborah Dakin,

Senior Deputy Chief Counsel, Regulations and Legislation Division, The Office of Thrift Supervision.

[FR Doc. E8–1198 Filed 1–23–08; 8:45 am]

BILLING CODE 4810–33–P, 6714–01–P, 6210–01–P, 6720–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's Office of Agreements (202–523–5793 or *tradeanalysis@fmc.gov*).

Agreement No.: 011839–007.

Title: Med-Gulf Space Charter Agreement.

Parties: Hapag-Lloyd AG and Compania Sud Americana de Vapores S.A.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment would reduce the amount of space chartered to Compania Sud Americana de Vapores S.A.

Agreement No.: 011962–004.

Title: Consolidated Chassis Management Pool Agreement.

Parties: The Ocean Carrier Equipment Management Association and its member lines; the Association's subsidiary Consolidated Chassis Management LLC and its affiliates; China Shipping Container Lines Co., Ltd.; Companhia Libra de Navegacao; Compania Libra de Navegacion Uruguay; Matson Navigation Co.; Mediterranean Shipping Co., S.A.; Norasia Container Lines Limited; Westwood Shipping Lines; and Zim Integrated Shipping Services Ltd.

Filing Party: Jeffrey F. Lawrence, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment would add the Midwest Consolidated Chassis Pool LLC as a member to the agreement.

Agreement No.: 012023.

Title: CSAV/NYK ECUS–WCSA Space Charter Agreement.

Parties: Compania Sud Americana de Vapores S.A. and Nippon Yusen Kaisha.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The agreement authorizes CSAV to charter space to NYK for the carriage of vehicles from Baltimore and Miami to ports in Chile and Peru.

By Order of the Federal Maritime Commission.

Dated: January 18, 2008.

Karen V. Gregory,

Assistant Secretary.

[FR Doc. E8–1225 Filed 1–23–08; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL TRADE COMMISSION

[Docket No. 9325]

Herbs Nutrition Corporation, et al.; Analysis of Proposed Consent Order to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before February 19, 2008.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''Herbs Nutrition, Docket No. 9325,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/ Office of the Secretary, Room 135-H, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Comments containing confidential material must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with Commission Rule 4.9(c). 16 CFR 4.9(c) (2005).[1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments that do not contain any nonpublic information may instead be filed in electronic form as part of or as an attachment to email messages directed to the following email box: *consentagreement@ftc.gov*.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC website, to the extent practicable, at *www.ftc.gov*. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm*.

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

FOR FURTHER INFORMATION CONTACT: Gregory Ashe (202–326–3719) or Janice Frankle (202–326–3022), Bureau of Consumer Protection, 600 Pennsylvania Avenue, NW., Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 3.25(f) of the Commission Rules of Practice, 16 CFR 3.25(f), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for January 17, 2008), on the World Wide Web, at *http://www.ftc.gov/os/2008/01/index.htm*. A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326-2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order to Aid Public Comment

The Federal Trade Commission (''FTC'' or ''Commission'') has accepted, subject to final approval, an agreement containing a consent order from Herbs Nutrition Corporation, a corporation, and Syed Jafry, individually and as an officer of Herbs Nutrition (together, ''respondents''). The proposed order resolves the allegations of the complaint issued against the respondents on September 28, 2007.

The proposed consent order has been placed on the public record for thirty (30) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter involves the advertising and promotion of Eternal Woman Progesterone Cream and Pro-Gest Body Cream, transdermal creams that, according to their respective labels, contain, among other ingredients,

natural progesterone. According to the Commission's complaint, the respondents represented that Eternal Woman Progesterone Cream and Pro-Gest Body Cream: (1) were effective in preventing, treating, or curing osteoporosis; (2) were effective in preventing or reducing the risk of estrogen-inducted endometrial (uterine) cancer; and (3) did not increase the user's risk of developing breast cancer and/or were effective in preventing or reducing the user's risk of developing breast cancer. The complaint alleged that the respondents failed to have substantiation for these claims. The proposed consent order contains provisions designed to prevent the respondents from engaging in similar acts and practices in the future.

Part I of the proposed order requires the respondents to have competent and reliable scientific evidence substantiating claims that any progesterone product or any other dietary supplement, food, drug, device or health-related service or program is effective in preventing, treating, or curing osteoporosis, in preventing or reducing the risk of estrogen-induced endometrial cancer or breast cancer, or in the mitigation, treatment, prevention, or cure of any disease, illness, or health condition; that it does not increase the user's risk of developing breast cancer, is safe for human use, or has no side effects; or about its health benefits, performance, efficacy, safety, or side effects.

Part II of the proposed order prevents the respondents from misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test, study, or research.

Part III of the proposed order provides that the order does not prohibit the respondents from making representations for any drug that are permitted in labeling for the drug under any tentative final or final Food and Drug Administration (''FDA'') standard or under any new drug application approved by the FDA; representations for any medical device that are permitted in labeling under any new medical device application approved by the FDA; and representations for any product that are specifically permitted in labeling for that product by regulations issued by the FDA under the Nutrition Labeling and Education Act of 1990.

Parts IV through VIII require the respondents to keep copies of relevant advertisements and materials substantiating claims made in the advertisements; to provide copies of the order to certain of their personnel; to notify the Commission of changes in corporate structure and changes in employment that might affect compliance obligations under the order; and to file compliance reports with the Commission. Part IX provides that the order will terminate after twenty (20) years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark

Secretary

[FR Doc. E8–1169 Filed 1–23–08: 8:45 am]

[BILLING CODE 6750–01–S]

FEDERAL TRADE COMMISSION

[File No. 072 3046]

Life is good, Inc., and Life is good Retail, Inc.; Analysis of Proposed Consent Order to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before February 19, 2008.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''Life is good, File No. 072 3046,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room 135-H, 600 Pennsylvania Avenue, NW., Washington, D.C. 20580. Comments containing confidential material must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with Commission Rule 4.9(c). 16 CFR 4.9(c) (2005).[1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments that do not contain any nonpublic information may instead be filed in electronic form as part of or as an attachment to email messages directed to the following email box: *consentagreement@ftc.gov*.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC website, to the extent practicable, at *www.ftc.gov*. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm*.

FOR FURTHER INFORMATION CONTACT: Jessica Rich, FTC Bureau of Consumer Protection, 600 Pennsylvania Avenue, NW., Washington, D.C. 20580, (202) 326-2252.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for January 17, 2008), on the World Wide Web, at *http://www.ftc.gov/os/2008/01/index.htm*. A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW., Washington, D.C. 20580, either in person or by calling (202) 326-2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, a consent agreement from Life is good, Inc. and Life is good Retail, Inc. (collectively, ''Life is good'').

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

Life is good designs and distributes retail apparel and accessories and operates a retail website at *www.lifeisgood.com*. In selling its products, Life is good routinely has collected sensitive information from consumers, including name, address, e-mail address, phone number, credit card number, credit card expiration date, and credit card security code (hereinafter ''consumer information''). Life is good has collected this consumer information through its website and telephone orders and stored it on a network computer accessible through the website. This matter concerns alleged false or misleading representations Life is good made about the security it provided for this information.

The Commission's proposed complaint alleges that Life is good represented that it implemented reasonable and appropriate security measures to protect the privacy and confidentiality of sensitive consumer information. The complaint alleges this representation was false because Life is good engaged in a number of practices that, taken together, failed to provide reasonable and appropriate security for the sensitive consumer information stored on its computer network. In particular, Life is good: (1) created unnecessary risks to credit card information by storing it indefinitely in clear, readable text on its network without a business need, and by storing credit card security codes; (2) failed to assess adequately the vulnerability of its web application and corporate computer network to certain commonly known or reasonably foreseeable attacks, such SQL injection attacks; (3) failed to implement simple, free or low-cost, and readily available defenses to SQL and related types of attacks; (4) failed to use readily available security measures to monitor and control connections from the network to the internet; and (5) failed to employ sufficient measures to detect unauthorized access to credit card information.

The complaint further alleges that between June and August 2006, a hacker exploited Life is good's failures by using SQL injection attacks on Life is good's website and web application and exporting to the hacker's browser consumer information for thousands of customers, including credit card numbers, expiration dates, and security codes.

The proposed order applies to personal information Life is good collects from or about consumers. It contains provisions designed to prevent Life is good from engaging in the future in practices similar to those alleged in the complaint.

Part I of the proposed order prohibits Life is good, in connection with the collection of personally identifiable information from or about consumers, in or affecting commerce, from misrepresenting the extent to which it maintains and protects the privacy, confidentiality, or integrity of such information.

Part II of the proposed order requires Life is good to establish and maintain a comprehensive information security program in writing that is reasonably designed to protect the security, confidentiality, and integrity of personal information collected from or about consumers. The security program must contain administrative, technical, and physical safeguards appropriate to Life is good's size and complexity, the nature and scope of its activities, and the sensitivity of the personal information collected from or about consumers. Specifically, the order requires Life is good to:

1. Designate an employee or employees to coordinate and be accountable for the information security program.

2. Identify material internal and external risks to the security, confidentiality, and integrity of personal information that could result in the unauthorized disclosure, misuse, loss, alteration, destruction, or other compromise of such information, and assess the sufficiency of any safeguards in place to control these risks.

3. Design and implement reasonable safeguards to control the risks identified through risk assessment, and regularly test or monitor the effectiveness of the safeguards' key controls, systems, and procedures.

4. Develop and use reasonable steps to retain service providers capable of appropriately safeguarding personal information they receive from respondents, require service providers by contract to implement and maintain appropriate safeguards, and monitor their safeguarding of personal information.

5. Evaluate and adjust its information security program in light of the results of the testing and monitoring, any material changes to its operations or business arrangements, or any other circumstances that it knows or has reason to know may have a material impact on the effectiveness of their information security program.

Part III of the proposed order requires that Life is good obtain, covering the first 180 days after the order is served, and on a biennial basis thereafter for twenty (20) years, an assessment and report from a qualified, objective, independent third-party professional, certifying, among other things, that (1) it has in place a security program that provides protections that meet or exceed the protections required by Part II of the proposed order; and (2) its security program is operating with sufficient effectiveness to provide reasonable assurance that the security, confidentiality, and integrity of consumers' personal information is protected.

Parts IV through VII of the proposed order are reporting and compliance provisions. Part IV requires Life is good to retain documents relating to their compliance with the order. For most records, the order required that the documents be retained for a five-year period. For the third-party assessments and supporting documents, Life is good must retain the documents for a period of three years after the date that each assessment is prepared. Part V requires dissemination of the order now and in the future to persons with responsibilities relating to the subject matter of the order. Part VI ensures notification to the FTC of changes in corporate status. Part VII mandates that Life is good submit an initial compliance report to the FTC, and make available to the FTC subsequent reports. Part VIII is a provision ''sunsetting'' the order after twenty (20) years, with certain exceptions.

The purpose of the analysis is to aid public comment on the proposed order. It is not intended to constitute an official interpretation of the proposed order or to modify its terms in any way.

By direction of the Commission.

Donald S. Clark

Secretary

[FR Doc. E8–1168 Filed 1–23–08: 8:45 am]

[BILLING CODE 6750–01–S]

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0197]

General Services Administration Acquisition Regulation;Information Collection; GSAR Provision 552.237–70, Qualifications of Offerors

AGENCY: Office of the Chief Acquisition Officer, GSA.

ACTION: Notice of request for comments regarding a renewal to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration will be submitting to the Office of Management and Budget (OMB) a request to review and approve a renewal of a currently approved information collection requirement regarding the qualifications of offerors. The clearance currently expires on April 30, 2008.

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

DATES: Submit comments on or before: March 24, 2008.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Jackson, Contract Policy Division, GSA, (202) 208–4949.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Regulatory Secretariat (VIR), General Services Administration, Room 4035, 1800 F Street, NW., Washington, DC 20405. Please cite OMB Control No. 3090–0197, GSAR Provision 552.237–70, Qualifications of Offerors, in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Services Administration (GSA) has various mission responsibilities related to the acquisition and provision of service contracts. These mission responsibilities generate requirements that are realized through the solicitation and award of contracts for building services. Individual solicitations and resulting contracts may impose unique information collection and reporting requirements on contractors not required by regulation, but necessary to evaluate particular program accomplishments and measure success in meeting program objectives.

B. Annual Reporting Burden

Respondents: 6794

Responses Per Respondent: 1

Hours Per Response: 1

Total Burden Hours: 6794

OBTAINING COPIES OF PROPOSALS: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW., Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 3090–0197, GSAR Provision 552.237–70, Qualifications of Offerors, in all correspondence.

Dated: January 15, 2008.

Al Matera,

Director, Office of Acquisition Policy.

[FR Doc. E8–1144 Filed 1–23–08; 8:45 am]

BILLING CODE 6820–61–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Application Requirements for the Low Income Home Energy Assistance Program (LIHEAP) Residential Energy Assistance Challenge Program (REACH) Model Plan.

OMB No.: New Collection.

Description: States, including the District of Columbia, Tribes, Tribal organizations and Territories applying for LIHEAP REACH funds must submit an annual application prior to receiving Federal funds. The Human Services Amendments of 1994 (Pub. L. 103–252) amended the LIHEAP statute to add Section 2607B, which established the REACH Program. REACH was funded for the first time in FY 1996 and is intended to: (1) Minimize health and safety risks that result from high energy burdens on low-income Americans; (2) reduce home energy vulnerability and prevent homelessness as a result of the inability to pay energy bills; (3) increase the efficiency of energy usage by low-income families, helping them achieve energy self-sufficiency; and (4) target energy assistance to individuals who are most in need.

The REACH Model Plan clarifies the information being requested and ensures the submission of all the information required by statute. The form facilitates our response to numerous queries each year concerning the information that should be included in the REACH application. Submission of a REACH application and use of the REACH Model Plan is voluntary. Grantees have the option to use another format.

Respondents: State Governments, Tribal governments, Insular Areas, the District of Columbia, and the Commonwealth of Puerto Rico.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
REACH Model Plan	51	1	72	3,672

Estimated Total Annual Burden Hours: 3,672.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this

document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following:

Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–6974, Attn: Desk Officer for the Administration for Children and Families.

Janean Chambers,

Reports Clearance Officer.

[FR Doc. 08–246 Filed 1–23–08; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2008N–0009]

Agency Information Collection Activities; Proposed Collection; Comment Request; Customer/Partner Service Surveys

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on voluntary customer satisfaction service surveys to implement Executive Order 12862.

DATES: Submit written or electronic comments on the collection of information by March 24, 2008.

ADDRESSES: Submit electronic comments on the collection of information to: *http://www.fda.gov/dockets/ecomments* or *http://www.regulations.gov*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of the Chief Information Officer (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Customer/Partner Service Surveys (OMB Control Number 0910–0360)—Extension

Under section 903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 393), FDA is authorized to conduct research and public information programs about regulated products and responsibilities of the agency. Executive Order 12862, entitled ''Setting Customer Service Standard,'' directs Federal agencies that ''provide significant services directly to the public'' to ''survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services.'' FDA is seeking OMB clearance to conduct a series of surveys to implement Executive Order 12862. Participation in the surveys is voluntary. This request covers customer/partner service surveys of regulated entities, such as food processors; cosmetic drug, biologic and medical device manufacturers; consumers; and health professionals. The request also covers ''partner'' (State and local governments) customer service surveys.

FDA will use the information from these surveys to identify strengths and weaknesses in service to customers/partners and to make improvements. The surveys will measure timeliness, appropriateness and accuracy of information, courtesy, and problem resolution in the context of individual programs.

FDA estimates conducting 15 customer/partner service surveys per year, each requiring an average of 18 minutes for review and completion. We estimate respondents to these surveys to be between 50 and 6,000 customers. Some of these surveys will be repeats of earlier surveys for purposes of monitoring customer/partner service and developing long-term data.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN [1]

Type of Survey	No. of Respondents	Annual Frequency per Response	Hours per Response	Total Hours
Mail, telephone, fax, web-based	15,000	1	.30	4,500

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

Dated: January 9, 2008.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E8–1200 Filed 1–23–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Native American Research Centers for Health (NARCH) Grants

Announcement Type: New and Competing Continuations.

Funding Announcement Number: HHS–2009–IHS–NARCHV–0001.

Catalog of Federal Domestic Assistance Number(s): 93.933.

Key Dates: Letter of Intent Deadline: March 15, 2008.

Application Deadline Date: May 16, 2008.

Review Date: October, 2008.

Earliest Anticipated Start Date: June 1, 2009.

I. Funding Opportunity Description

The Indian Health Service (IHS), in conjunction with the National Institute of General Medical Sciences (NIGMS) and other institutes of the National Institutes of Health (NIH) announces competitive grant applications for Native American Research Centers for Health (NARCH), an initiative to support new and/or continuing centers or projects funded under the NARCH grant program. This funding mechanism will develop further opportunities for conducting research and research training to meet the needs of American Indian/Alaska Native (AI/AN) communities. This program is authorized under the Snyder Act, 25 U.S.C. 13, the Public Health Service Act, 42 U.S.C. 241 as amended, and the Indian Health Care Improvement Act, 25 U.S.C. 1602(a)(b)(16). This program is described at 93.933 in the Catalog of Federal Domestic Assistance.

Background Information: TheAI/AN Tribal nations and communities have long experienced health status worse than that of other Americans. Although major gains in reducing health disparities were made during the last half of the twentieth century, most gains stopped by the mid-1980s (Trends in Indian Health 1998–99) and a few diseases, e.g., diabetes, worsened. ''All Indian'' rates contain marked variation among the IHS Areas or regions (Regional Differences in Indian Health 1998–99); and variation by Tribe exists within Areas as well. The Trends and Regional Differences reference can be found at the IHS Web site at: *http://www.ihs.gov/NonMedicalPrograms/IHS_Stats.* Although the AI/AN mortality rates for all cancers are about 20 percent lower than the U.S. rates for all races, there is variation among IHS Areas for specific cancers. Moreover, the favorable AI/AN mortality rates for some cancers may be due to markedly lower incidence rates partly offset by higher case-fatality rates. Unfamiliarity with modern health care may adversely influence health status among the elderly, the low-income elderly, and Tribes, and also may reduce the acceptability of health research among them. The daunting tasks confronting Tribes, researchers, and health care and public health programs in the beginning of the twenty-first century are to resume the reduction of health disparities that had occurred through the 1980s, to reverse the worsening in a few diseases, to maintain and strengthen the favorable status, and to reduce the disparities among and within Areas and Tribes. Factors known to contribute to health status and disparities are complex, and include underlying biology, physiology, and genetics, as well as ethnicity, culture, socioeconomic status, gender/sex, age, geographical access to care, and levels of insurance. Additional factors known to contribute to health status and dispariteis include:

1. Family, home, and work environments;
2. General or culturally specific health practices;
3. Social support systems;
4. Lack of access to culturally-appropriate health care; and
5. Attitudes toward health.

Yet none of these along or in combination accounts for all documented differences. Health disparities of AI/ANs may also reflect a lack of in-depth research relevant to improving their health status. Many AI/ANs distrust research for historical reasons. One approach that combats this distrust is to ensure that Tribes are the managing partners in training and research that involves them, as for example, in community-based participatory research (CBPR) (i.e., a collaborative research process between researchers and community representatives). This approach is especially helpful to design both training relevant to researchers from Tribal communities, and research relevant to the health needs of the communities.

Research Objectives: The NARCH initiative will support partnerships between Federally Recognized AI/AN Tribes Organizations (including national and area Indian Health Boards, and Tribal colleges meeting the definition of a Tribal organization as defined by 25 U.S.C. 1603(e)) and institutions that conduct intensive academic-level biomedical, behavioral and health services research. These partnerships are called Native American Research Centers for Health (NARCH). Due to the complexity of factors contributing to the health and disease of AI/ANs, and to their health disparities compared with other Americans, the collaborative efforts of the agencies of the Department of Health and Human Services (HHS) and the collaboration of researchers and AI/AN communities are needed to achieve significant improvements in the health status of AI/AN people. To accomplish this goal, in addition to objectives set by the Tribe, Tribal Organization or Indian Health Boards, the IHS NARCH program will pursue the following program objectives:

- To develop a cadre of AI/AN scientists and Health Professionals—Opportunities are needed to develop more AI/AN scientists and health professionals engaged in research, and to conduct biomedical, clinical, behavioral and health services research that is responsive to the needs of the AI/AN community and the goals of this initiative. Faculty/researchers and students at each proposed NARCH will develop investigator-initiated, scientifically meritorious research projects, including pilot research projects, and will be supported through science education projects designed to increase the numbers of, and to improve the research skills of, AI/AN investigators and investigators involved with AI/ANs.
- To enhance Partnerships and reduce distrust of research by AI/AN communities—Recent community-based participatory research suggests that AI/AN communities can work collaboratively in partnership with health researchers to further the research needs of AI/ANs. Fully utilizing all cultural and scientific knowledge, strengths, and competencies, such partnerships can lead to better understanding of the biological, genetic, behavioral, psychological, cultural, social, and economic factors either promoting or hindering improved health status of AI/ANs, and generate the development and evaluation of interventions to improve their health status. Community distrust of research and researchers will be reduced by offering the Tribe greater control over the research process.
- To Reduce Health Disparities—In the Indian Health Care Improvement Act, Pub. L. 94–437 (as amended), IHS was legislatively mandated to improve

the delivery of effective health care to AI/ANs. In the NIH Revitalization Act of 1993, NIH was encouraged to increase the number of under-represented minorities participating in biomedical, clinical, and behavioral research, including studies on drug abuse and alcoholism, and the examination of the role of resiliency in the prevention and treatment of those conditions. Also, the ''Initiative to Eliminate Racial and Ethnic Disparities in Health'' by HHS (*http://www.omhrc.gov/rah*) encouraged NIH to help reduce health disparities. In response to these priorities, the IHS and NIH have established a collaboration to support the NARCH.

Reducing health disparities among AI/AN communities and individuals may be fostered by greater understanding of how to enhance their strengths and resilience. While AI/AN communities have relied on health research and medical science to reduce health disparities, they have also relied on their own psychological, organizational, and cultural assets and strengths to survive major harms and disruptions over the centuries, and to rebound from insults to health.

The mission of NIH is to acquire new knowledge that will lead to better health by understanding the processes underlying health and disease that in turn will help prevent, detect, diagnose, and treat disease and disability. The NARCH initiative works toward the NIH mission by supporting research that discovers the interrelationships among the many factors that contribute to health and disease, and by helping to train and promote AI/AN researchers and researchers concerned with AI/AN health.

II. Award Information

Type of Awards: Grant.

Estimated Funds Available: The estimated funds (total costs) available for the first year of support for the entire initiative is expected to be at least $3.0 million in Fiscal Year 2009. The actual amount may vary, depending on the response to the request for applications (RFA) and availability of funds. An applicant may request a project period not to exceed four years of support, and direct costs not to exceed $1,000,000 per center or $500,000 per project (research or training) in the first year of each award. Direct costs to the applicant include the total cost of each subcontract (subcontractor direct plus subcontractor indirect costs).

Anticipated Number of Awards: An estimated five to fifteen awards will be made under the program.

Award Amount: $100,000–$1,000,000 per year.

III. Eligibility Information

The new or existing NARCH must be a working partnership of the eligible AI/AN organization and of the research-intensive institution. Applicants eligible to receive the NARCH award are Federally recognized Tribes and Tribal organizations as defined under the Indian Health Care Improvement Act, 25 U.S.C. 1603(d) and (3), including eligible Indian Health Boards or Tribal Colleges applying on behalf of eligible Federally recognized Tribes or Tribal organizations. As the grantee, the eligible AI/AN organization will define criteria and eligibility for participation in all aspects of the partnership, consistent with this announcement. A minimum of 30 percent of the grant funds must be budgeted in the application to remain with the eligible AI/AN organization(s); that is, no more than 70 percent of the application's total budget may be contained in subcontract budgets of the non-eligible subcontracting partner institutions or organization.

1. *Eligible Applicants—The AI/AN applicant must be one of the following:*

- A federally-recognized AI/AN Tribe, as defined under 25 U.S.C. 1603(d); or
- A Tribal organization, as defined under 25 USC 1603(e), including Tribal Colleges or health boards meeting this definition; or
- A consortium of two or more of those Tribes or Tribal organizations.

Applicants other than Tribes must provide proof of non-profit status.

2. Cost Sharing or Matching—The NARCH program does not require matching funds or cost sharing.

3. *The Research-Intensive Partner:* The Research-Intensive Partner must be an accredited public or private nonprofit university or other institution that has an established record of conducting research into the health problems of AI/AN; has demonstrated a commitment to enhancing the capability of AI/AN faculty/researchers, students, investigators, and communities to engage in biomedical, behavioral, clinical and health services research; and has demonstrated a commitment to mentoring AI/AN faculty/researchers, students, and investigators.

4. *Principal Investigator:* The Principal Investigator, the individual responsible for the administration (including fiscal management) of the overall project, must have his/her primary appointment with the AI/AN applicant organization. Special arrangements of employment, such as inter-organizational personnel agreements, are permissible. The Principal Investigator may be, but is not required to be, the NARCH Program Director or a Research Project Investigator. The NARCH Principal Investigator may or may not have formal academic/research credentials, but if not, then the NARCH Program Director must be so qualified.

The traditional NIH research project grant consists of a single Principal Investigator (PI) working with a small group of subordinates on an independent research project. Although this model clearly continues to work well and encourages creativity and productivity, it does not always work well for multidisciplinary efforts and collaboration. Increasingly, health-related research involves teams that vary in terms of size, hierarchy, location of participants, goals, disciplines, and structure. There is growing consensus that team science would be encouraged if more than one PI could be recognized on individual awards. The NIH has adopted a multiple-PI model, as recently directed by the Office of Science and Technology Policy. All agencies that have research and research-related programs must offer the multiple-PI model as an option. Note, it is only an option, not a requirement. The traditional NARCH division of roles between Principal Investigator and Project Director will usually address these issues to a satisfactory degree. For additional information regarding the new multiple-PI model, please click on the following Web site: *http://grants.nih.gov/grants/multi_pi/index.htm.*

5. *NARCH Program Director:* The NARCH Program Director is the individual responsible for the day-to-day leadersip and management of the research and training programs within the proposed NARCH. The Program Director may be, but is not required to be, the Student and Faculty/Researcher Development Director or a Research Project Investigator. The NARCH Program Director may or may not have formal academic/research credentials, but if not, then the Principal Investigator must be so qualified.

6. *Student and Faculty/Researcher Development Director and Participants:* The NARCH initiative is an institutional developmental grant mechanism that places an emphasis on the continual development of students and faculty/researchers. If a new Student and/or Faculty/Researcher Development Program is proposed in the current application, then the Principal Investigator of that project is expected to be the NARCH Student and Faculty Development Director. In order to be included as the Student and Faculty

Development Director, the prospective director must have a faculty/researcher appointment at the research-intensive institution (or equivalent appointment at the AI/AN organization or other consortium partner) and must demonstrate that he/she has the knowledge, skills, and capabilities to mentor students and faculty/researchers and to generate and direct development and mentoring programs.

The Student and Faculty Development Director may be the NARCH Program Director. Faculty/researchers and students should be supported in research education activities that improve their skills and abilities to be successful at the next stage of their professional development. To be included as a participant for faculty/researcher development in the proposed NARCH, the individual must have a faculty/researcher appointment at the research-intensive institution or equivalent appointment at the AI/AN organization or consortium partner.

7. *Research Project Investigators:* The NARCH initiative is an institutional developmental grant mechanism that places an emphasis on continual improvement of the research competitiveness of the research investigators. In order to be included as a research project investigator in the NARCH, a prospective investigator must have a faculty appointment at the research-intensive institution or equivalent appointment at the AI/AN organization or other consortium partner, and must show that he/she has the need, based on institutional, departmental, and professional development plans, to enhance his/her research knowledge, skills, and capabilities by engaging in the proposed research program and associated activities.

8. *Tribal Approval of the Application:* It is the policy of the IHS that all research involving AI/AN Tribes be approved by the Tribal governments with jurisdiction. Therefore, the following documentation is required as part of the application for new or continuing centers or additional NARCH projects:

• *Tribal Resolution:* If the applicant is an Indian Tribe or Tribal organization, a resolution from the Tribal government of all Tribes to be served supporting the project must accompany the application submission. Applications by Tribal organizations will not require resolutions if the current Tribal resolutions under which they operate would encompass the proposed activities. In this instance a copy of the current resolution must accompany the application. The listed Tribes to be served by the project in the proposal must match the set of appended resolutions. If a resolution from an appropriate representative of each Tribe to be served is not submitted prior to November 1, 2008, the application will be considered incomplete and will not be considered for funding.

An official signed resolution must be received by November 1, 2008 to the Division of Grants Operation by (DGO), IHS, at the Reyes Building, 801 Thompson Avenue, TMP 360, Rockville, MD 20852. A grant will not be awarded unless the signed resolution is received. Please include the funding opportunity number, as a reference to this announcement, if the resolutions are submitted as a separate mailing.

9. *Mechanism of Support:* Awards under this initiative will be administered using the competing institutional grant mechanism of the IHS, and will be reviewed using the NIH S06 mechanism.

IV. Application and Submission Information

1. *Address To Request Application Package:* NARCH Program Official, Reyes Building, 801 Thompson Avenue, Rockville, MD 20852 or by e-mail to *narch@ihs.gov.* Applicants are strongly encouraged to establish eligibility of their proposed applications prior to submission. Inquiries about eligibility should be addressed to Alan Trachtenberg, MD, MPH, at (301) 443–0578 or by E-mail to *narch@ihs.gov.* The application package, including supplemental instructions will be posted on the IHS Research Program Web site, at: *http://www.ihs.gov/MedicalPrograms/Research/narch.cfm.*

The NIH PHS 398 application instructions are available in an interactive format at: *http://grants.nih.gov/grants/funding/phs398/phs398.html.* Applicants must use the currently approved version of the PHS 398. For further assistance contact GrantsInfo, Telephone (301) 435–0714, E-mail: *GrantsInfo@nih.gov,* Telecommunications for the hearing impaired: TTY 301–451–0088.

Submit a typed and signed original application, including the Checklist, and one (1) single-sided photocopy of the entire application (including Appendices and supporting documents) in one package to: Division of Grants Operations, Indian Health Service, Reyes Building, 801 Thompson Avenue, TMP 360, Rockville, MD 20852–1627 (zip code is unchanged for express/courier services), *Telephone:* (301) 443–5204.

At the time of submission, applicants must also send four (4) additional single-sided photocopied and signed applications, including the Checklist, Appendices, and supporting documentation to: Center for Scientific Review (CSR), National Institutes of Health, 6701 Rockledge Drive, Room 6160—MSC 7892, Bethesda, MD 20892–7720, Bethesda, MD 20817 (for express or courier service). *Telephone:* (301) 435–0715. The CSR no longer accepts hand delivered applications.

The RFA label available at *http://grants1.nih.gov/grants/funding/phs398/label-bk.pdf* in the PDF format, must be affixed to the bottom-face page of the application. Type this RFA number: ''NOT GM–08–115'' on the label. Failure to use this label could delay processing the application and it may not reach the review committee in time for review. In addition, the ''Native American Research Centers for Health'' and the RFA number must be typed on line 2 of the face page of the application form and the YES box must be marked. E-mail or other electronic applications will not be accepted under this announcement.

Specific supplementary instructions for the PHS 398 application and budget preparation for the NARCH program may be obtained from the initiative contacts listed under VII. Agency Contacts, and will be posted at: *http://www.ihs.gov/MedicalPrograms/Research/narch.cfm.* There will be no acknowledgment of receipt of the application.

2. *Content and Form of Application Submission:* A proposed NARCH may include any or all of the following components: student development projects; faculty/researcher development projects; research projects (including pilot projects); and ''core'' administrative facilities.

The content of the application should explain the components of the application, and how they help meet the purpose of the NARCH initiative. A description should be provided of the current state of the research and research training enterprise at the proposed NARCH and its institutional and community partners, including faculty/researcher and student profiles.

A clear statement should be presented of the overall goals, specific measurable objectives, and anticipated milestones. These elements should be presented in the context of needed improvements in the partners' organizational infrastructure and environment for research. Documentation should be provided to establish that the research-intensive partner is an institution with a record of conducting research into the health of AI/ANs, and that it has a demonstrated commitment to the

special encouragement of, and assistance to, AI/AN faculty/researchers, students, investigators, and communities for enhancing their capacity to engage in biomedical, behavioral and health services research. Documentation about the nature of the partnership itself should be included, such as: the process to develop the application and proposed NARCH itself, the past and future efforts to increase the capacity of the partners to improve their partnership, and efforts to contribute to the success of the NARCH.

A plan for assessment of the benefits of the activities by the proposed NARCH on specific, measurable outcomes identified in the application should be provided. IHS and NIGMS recognize that Tribes, Tribally-based organizations, and research-intensive institutions are diverse in their missions, their health and economic status, and their cultures. Such an assessment could include a self-study by the proposed NARCH and its partners, which focuses on fact-finding, program evaluation, and recommendations for improvement in key areas.

Strategies for determining the initial and ongoing success of their efforts for organizational development should also be presented. It is expected that each proposed NARCH will develop its own set of strategies that best match its circumstances. Guidance and suggestions for program evaluation of a proposed NARCH can be obtained from *http://www.the-aps.org/education/promote/promote.html*.

Applications are strongly urged to contact NARCH initiative staff at an early stage to request the specific supplementary instructions for the PHS 398 for the NARCH grants. Supplementary instructions may be obtained from the initiative contacts listed under VII. Agency Contacts, and will be posted at: *http://www.ihs.gov/MedicalPrograms/Research/narch.cfm*.

If Student Development Projects are proposed, the NARCH application should describe new programs of modifications or additions to existing programs of the partners that encourage and facilitate AI/AN students to enter, advance, and remain in research careers. Such projects might include, but are not limited to, providing employment as research assistants in research projects of research-active mentors with an explicit mentoring plan, providing other mentoring with an explicit mentoring plan, providing workshops to improve technical or communication skills, providing motivating seminars or journal clubs highlighting problems of interest to students, providing contact with role models, and providing opportunities to travel to present results at national scientific meetings. If research mentorships or apprenticeships are proposed, the application should clearly document the experience, proposed commitment, and quality of the mentors in providing guidance and advice to students (including responsible conduct of research and research integrity, teaching, and protection of human subjects), and in fostering the development of academic and/or community based AI/AN researchers.

The application should describe how the development plans for the student will meet both the individual's professional development goals, and one purpose for the NARCH initiative: to develop a cadre of AI/AN scientists and health professionals. The application must have an evaluation plan for the project(s) that indicates the anticipated outcomes relative to the current baseline data. For example, one outcome might be the improved retention of AI/AN students in science majors. The application should indicate the anticipated (quantitative) improvement relative to the current retention rate.

A student in a NARCH Student Development Project must be a full-time or part-time student officially enrolled in an educational program leading to an undergraduate or graduate degree, or in a post-doctoral educational program, or (if well justified) in a late high school. A helpful book about mentoring science students is found at *http://book.nap.edu/catalog/5789.html*.

If Faculty/Researcher Development Projected are proposed, the NARCH application should describe the need, proposed activity, and anticipated outcomes. Faculty/researcher development projects might include, but are not limited to, short-term mentored research experiences in the lab of an active NIH-extramurally-funded researcher with an explicit mentoring plan, long-term general mentoring under an explicit mentoring plan, or attendance at workshops or courses or national meetings needed for acquiring specific skills or methodologies needed for prospective research. As with student development projects, the application should document the experience, proposed commitment, and quality of the mentors, teachers, or experience in providing guidance and advice to faculty/researchers, and in fostering the development of academic and community-based AI/AN research. The application must also describe the evaluation plan for the faculty/researcher development project. The application must clearly describe how the development plans for faculty/researchers will meet both the individual's professional development goals, and two purposes of the NARCH initiative:

- To develop a cadre of AI/AN scientists and health professionals, and
- To enhance the partnership of the proposed NARCH.

NARCH applications may include a maximum of five (5) regular Research Projects and a maximum of five (5) Pilot Research Projects. Unlike regular research projects, a pilot research project is limited in scope and is not expected to have preliminary data. It is also limited to a budget of no more then $50,000 direct costs per year for four years. The pilot research project is intended for faculty/researchers without current federal research support. Support for faculty/researchers participating in pilot research projects is preparatory to seeking more substantial funding from NIH research grant programs (e.g., Academic Research Enhancement Award, K and R01 awards), as well as funding from other agencies and private sources. Funds received from the proposed NARCH to support pilot research projects may not be used to supplement ongoing research projects. A NARCH application need not include both research projects and pilot research projects. Applications for only pilot research projects or for only research projects may be submitted. Individual project investigators may propose either a research project or a pilot research project, but not both.

Each research project or pilot research project should follow the instructions provided in PHS 398 (Revised 9/2004, Interim Revision 4/2006) for preparing research grant applications. The professional development goals must clearly describe specific objectives and milestones which should include, but are not limited to, improving competitiveness in acquiring grant support. The applicant should described how successful completion of the proposed research project will improve the research skills and will help develop the students and faculty/researchers, thus contributing to the overall goals and specific measurable objectives of the proposed NARCH.

Each research project or pilot research project must follow the IHS policy concerning Tribal approval, that all research involving AI/AN Tribes be approved by the Tribal governments with jurisdiction. That is, each grantee must include a resolution of approval from the Tribal government(s), or (if applicable) a letter of support signed by the director of the eligible AI/AN

organization, or both (if applicable) for projects that involve people or community(ies) of an AI/AN Tribe, or an eligible Tribal organization.

Research projects (including pilot research projects) proposed under this initiative must be in research areas normally funded by any of the NIH or other research agencies in the HHS. Research projects addressing health disparities and the health priorities of the AI/AN partner are especially encouraged.

A listing of grants recently funded by NIH may be found at Computer Retrieval of Information on Scientific Projects (CRISP), a searchable database of Federally funded biomedical research projects conducted at universities, hospitals, and other research institutions. It may be accessed at *http://ott.od.nih.gov/crisp.html.*

The following agencies, institutes, offices and centers have stated particular interests in supporting research under the NARCH Program as follows:

National Institute of Dental and Craniofacial Research (NIDCR)

Oral Health Research

NIDCR is committed to reducing the disproportionate burden of oral diseases experienced by AI/ANs. The focus of NIDCR's health disparities research is on improving oral health status and quality of life by understanding and addressing oral diseases that are prevalent in AI/AN communities, specifically caries (including early childhood caries), oral and pharyngeal cancer, and periodontal disease. Interdisciplinary research teams and the full participation of communities are viewed by NIDCR as essential components of any health disparities research.

Data that document oral disease prevalence are readily available for some populations, but not for others. Homogeneity in subgroups of populations cannot be assumed. For instance, there are national data for Mexican Americans, but not for the numerous other Hispanic subgroups. Similarly, data regarding the oral health status of various AI/AN Tribes are unavailable. Moreover, available data provide little insight into the etiology or determinants of oral disease and oral health. The paucity of quality data and conceptual models concerning the broad array of potential determinants and risk-factors inhibits progress toward preventing disease, and improving oral health status and quality of life. The NIDCR invites applications that, in preparation for intervention research, explore the complex array of social, behavioral, psychological, contextual, environmental and biological factors and their interactions that may contribute to oral health disparities within AI/AN communities. Including oral health status measures within broader epidemiologic studies is encouraged. However, applications that are limited to the assessment of disease prevalence and that explore a very limited range of potential determinants will be considered non-responsive.

The NIDCR has particular interest in intervention research that will provide clinically meaningful outcomes and essential information needed to inform clinical practice, public health policy, health care provision, community and/or individual action. Intervention studies that are grounded in theory are needed. Both basic and applied intervention research applications are invited. Studies may need to intervene at multiple levels within communities. The NIDCR encourages the use of the strongest research design possible and recognizes that not all intervention research is amenable to randomized clinical trials. Examples of health disparities intervention research of interest to the NIDCR includes but are not limited to:

- Effectiveness studies that tailor/target preventive approaches to communities/individuals;
- Research that intervenes in novel ways on macro- or intermediate level determinants of oral health status;
- Health services research that explores alternative approaches to delivering preventive oral health care;
- Studies that intervene on common risk factors or that take a systems approach;
- Studies that explore multifaceted strategies to intervene at several levels within society;
- Dissemination and implementation research at multiple organizational levels; and
- Research that uses appropriate technology for translation, implementation, adoption, adherence and acceptance of oral disease prevention programs in defined populations, clinics, and communities.

Intervention research should be reasonably applicable to a specific AI/AN population. To facilitate adequate enrollment and generalizability, intervention studies may need to be conducted at multiple sites. While small clinical trials are not permitted, studies may be conducted at a single site if enrollment is adequate and if sufficient numbers of participants are available to allow extrapolation of clinically meaningful results to the specific AI/AN population of interest.

Pilot research projects that are designed to lead to larger research projects funded as part of a center or as free-standing NIH grants may be proposed.

For additional information about oral health research contact:

Ruth Nowjack-Raymer, M.P.H., Ph.D., Director, Health Disparities Research Program, National Institute of Dental and Craniofacial Research, 45 Center Drive, Room 4AS–43F, Bethesda, MD 20892–6401, *Phone:* (301) 594–5394, *Fax:* (301) 480–8322, *E-mail: nowjackr@mail.nih.gov*.

National Institute on Drug Abuse (NIDA)

Neuroscience and Drug Abuse Research

AI/ANs demonstrate higher rates of drug abuse, particularly methamphetamine, tobacco and alcohol abuse, relative to other racial subgroups. According to 2002–2006 National Survey on Drug Use and Health (NSDUH) data, AI/AN past year methamphetamine use was 1.4% compared to 0.1% for African Americans, 0.6% for Hispanics or Latinos and 0.7% for Whites. Prevalence of use is high in both men and women.

Drug abuse patterns among AI/AN are complex and can vary by factors such as Tribe and geographic location. While some datasets are available that can provide general epidemiological data regarding use and abuse rates in this group, data are needed that better clarify where use rates are highest, among which Tribes, age and gender groups and the factors that predict drug abuse in these locales and groups. These data will assist in developing more targeted interventions and in identifying mechanisms related to drug abuse which can then serve as focal points for intervention.

In addition to scarce data on patterns of use, limited data are available assessing drug abuse prevention and treatment interventions for AI/AN. The matrix model has been proposed in particular to address methamphetamine abuse, but few data are available to assess the efficacy of this approach with this population. Several preventive interventions have been designed particularly for this population and results from them indicate their value, but more research is needed to clarify why these sometimes don't work in expected ways and whether the interventions that are being used but have not been evaluated are working to reduce drug use.

The NIDA is committed to reducing health disparities in drug abuse and related health and social consequences among AI/AN. Further, the Institute supports methodologies required by the NARCH, expecting that studies be developed and implemented using community participatory approaches.

Research topics of interest include but are not limited to:

- Studies that explore a range of behavioral, cultural, environmental and individual factors that contribute to drug abuse;
- Studies that explore the consequences of drug abuse among AI/AN;
- Studies that consider the full context of drug abuse, including poverty, family factors, school factors, intergenerational trauma, etc.;
- Studies that explore the role of traditional practices and spirituality in protecting against drug abuse;
- Studies that explore other factors that protect against use in those groups for whom use rates are lower;
- Studies that explore the efficacy and/or effectiveness of culturally relevant preventive interventions;
- Studies that explore the efficacy and/or effectiveness of culturally relevant treatment interventions;
- Studies that assess factors related to service utilization, including use rates and access to services, either in reservation or urban settings; and
- Studies that explore the organization, management and delivery of interventions.

For additional information about neuroscience or drug abuse research contact: Kathy Etz, PhD, National Institute on Drug Abuse, 6001 Executive Blvd., Room 5153 MSC 9589, Bethesda, MD 20852, *Phone:* (301) 402–1749, *Fax:* (301) 480–2543.

National Cancer Institute (NCI)

Tobacco Control Research

AI/ANs have been documented to have the highest smoking rate of any major racial/ethnic group in the U.S. According to the 2005 National Health Interview Survey of adults 18 and over, 32% of AI/AN are current smokers, compared with 21.9% of non-Hispanic whites, 21.5% of non-Hispanic Blacks, 13.3% of Asians and 16.2% of Hispanics. Prevalence of smoking is high among both men (37.5%) and women (26.8%).[1] A similar pattern can be seen among youth, where AI/AN youth have substantially higher smoking prevalence (23.1%) than non-Hispanic whites (14.9%), Hispanics (9.3%), non-Hispanics blacks (6.5%), and Asians (4.3%), according to data from the National Survey on Drug Use and Health. These data also show that non-smoking AI/AN youth demonstrated higher susceptibility to experimenting with smoking than most other racial/ethnic groups.[2]

At the same time, however, tobacco use patterns among the AI/AN population are complex and can vary substantially among subgroups of this population. Smoking rates among AI/ANs vary widely by region, being highest in the northwestern United States, in Canada, and in Alaska. Additionally, use of smokeless tobacco is higher among AI/AN adults compared with other racial/ethnic groups. Some studies have found particularly high rates of smokeless tobacco use (greater than 50%) among AN populations, including pregnant women, due to the use of Iqmik, a traditional form of smokeless tobacco.[3]

Understanding tobacco use among Native American populations is also complicated by the fact that tobacco has had a substantial role in Native American culture and tradition. Historically, tobacco has been used in medicinal and healing rituals and in ceremonial and religious practices. It is important to distinguish the traditional, ceremonial uses of tobacco, which are limited to specific occasions, from addictive use of tobacco products. However, the relationship between these different contexts of tobacco use and their impact on behavior has not received sufficient scientific study.

Moreover, limited data are available on the effectiveness of tobacco use cessation interventions targeted to AI/ANs. Preliminary focus group studies suggest that Native American smokers are more likely to have negative attitudes towards pharmacotherapies, such as concerns about side effects and lack of trust in conventional medicine.[4] Thus, there is a need to develop culturally-appropriate interventions targeted to this population.

The NCI Tobacco Control Research Branch is committed to supporting transdisciplinary research aimed at reducing disparities in tobacco use and related health outcomes. The NARCH provides a unique mechanism to support collaborative research involving researchers from multiple disciplines to address a complex scientific and public health challenge.

Sample research areas of interest include but are not limited to the following:

- Studies to understand the role of a range of behavioral, cultural and environmental factors that lead to initiation of tobacco use among AI/AN populations.
- Development and evaluation of culturally appropriate interventions for tobacco use prevention and cessation targeted to AI/AN populations;
- Studies of how tobacco related attitudes and behaviors in youth and adults are influenced by ceremonial tobacco use and other cultural factors;
- Studies of tobacco use behavior in relation to different products, including dual use of cigarettes and smokeless tobacco;
- Research on the characteristics, use and health effects of traditional tobacco products, such as Iqmik;
- Research to understand disparities in tobacco use within AI/AN populations given substantial variations by region and other factors; and
- Studies to identify and address barriers to treatment among AI/ANs.

References

1. Tobacco Use Among Adults—United States, 2005. MMWR. October 27, 2006; 55: 1145–1148.

2. Racial/Ethnic Differences Among Youths in Cigarette Smoking and Susceptibility to Start Smoking—United States, 2002–2004. MMWR. December 1, 2006; 55; 1275 1277.

3. Renner CC, Pattern CA, Day GE, Enoch CC, Schroeder DR, Offord KP, Hurt RD, Gasheen A, Gill L. Tobacco use during pregnancy among Alaska Natives in western Alaska. Alaska Med. 2005;47:12–6.

4. Burgess D, Fu SS, Joseph AM, Hatsukami DK, Solomon J, van Ryn M. Beliefs and experiences regarding smoking cessation among American Indians. Nicotine Tob Res. 2007; 9 Suppl 1: S19–28.

For additional information about NCI tobacco research contact: Mark Parascandola, PhD, Epidemiologist, Tobacco Control Research Branch, National Cancer Institute, 6130 Executive Blvd. MSC 7337, Executive Plaza North, Room 4039, Bethesda, MD 20892, *Phone:* 301–451–4587, *Fax:* 301–496–8675, *paramark@mail.nih.gov.*

National Heart, Lung, and Blood Institute (NHLBI)

Cardiovascular and Respiratory Research

The NHLBI has a strong history of supporting research to document and intervene on health disparities among AI/ANs, including the Strong Heart Study, Pathways, Genetics of Coronary Artery Disease in Alaska Natives (GOCADAN), the Stop Atherosclerosis in Native Diabetics Study (SANDS), and Community-Responsive Interventions to Reduce Cardiovascular Risks in AI/ANs.

The Strong Heart Study showed that many AI/AN communities bear a heavy

burden of cardiovascular disease (CVD) and cardiovascular risk factors (e.g., obesity, diabetes) that could be reduced through effective interventions on modifiable risk factors. The high burden of disease will worsen unless behaviors and lifestyles affecting CVD risk can be changed. Prevalence of obesity in AI/AN communities is about 50% higher than in the U.S. general population in which obesity is often described as being of epidemic proportions. In some AI/AN communities, cigarette smoking, sedentary lifestyle, and stress augment the adverse effects of obesity. AI/AN are particularly vulnerable to Type II diabetes, a problem exacerbated by high rates of obesity. Diabetes prevalence is 3–20 fold higher among AI/AN than in the general U.S. population. It is an important cause of coronary heart disease, cardiomyopathy, end-stage renal disease, non-traumatic amputation, and vision impairment. Lipid abnormalities also are common in Type II diabetics,, particularly high triglycerides and low HDL-cholesterol levels. Dyslipidemia and blood pressure can be improved by appropriate changes in diet and by increased exercise. CVD risk is also substantially improved by smoking cessation. In addition, attention to high stress levels, untreated sleep disordered breathing, short sleep duration, and depression may be warranted because of evidence that they may influence the health behaviors of interest. For example, poorer diet, higher smoking rates, and physical inactivity are more prominent in those with high stress, sleep disorders, or depression. These psychosocial factors also are associated with CVD progression in observational epidemiologic studies, and there is evidence from smaller clinical studies they may affect mechanisms leading to CVD. NHLBI is interested in supporting research in AI/AN communities that promote the adoption of healthy lifestyles and/or improve behaviors related to cardiovascular (CV) risk, such as weight reduction, regular physical activity, and smoking cessation. These behaviors and lifestyles are known to affect biological cardiovascular risk factors, such as hypertension, dyslipidemia, obesity, glucose intolerance, and diabetes. In addition, control of these risk factors by guideline-based use of antihypertensive, lipid lowering, and hypoglycemic drugs can reduce their adverse consequences. However, these pharmacological interventions are often suboptimally utilized in AI/AN communities. The NHLBI is interested in reducing cardiovascular disease mortality and morbidity in AI/AN, whether by lifestyle changes, drug interventions, or combinations thereof.

Lifestyles characterized by sleeping less than 5–6 hours per night are associated with increased risk of CVD, obesity, and diabetes. Insufficient sleep as a behavioral stressor is associated with risk of new onset substance abuse and relapse, and depression risk and relapse. Intervention studies to assess the efficacy of improving sleep as part of a healthy lifestyle or assessing how improving sleep disorders could improve CVD outcomes would be of interest to NHLBI.

AI/AN also have been documented to exhibit high rates of chronic respiratory disease. AI/AN adults have the highest asthma rate among single-race groups. Recent evidence suggests that 11.6 percent of AI/AN suffer from asthma. This is significantly higher than the national average of 7.5 percent, and much higher than every other single racial or ethnic group. Chronic obstructive pulmonary disease (COPD), which includes emphysema and chronic bronchitis, is the eighth leading cause of death from chronic disease for AI/AN men and the sixth leading cause of death for women. AI/AN have the second highest rates of cystic fibrosis following whites. One in 10,500 AI/AN has cystic fibrosis compared with one in 3,500 whites. Pueblo Indians and Zuni Indians have higher incidence than among other AI/AN Tribes. Sleep disordered breathing appears to be 30–60% more common among American Indians than other racial and ethnic groups. NHLBI is interested in supporting research in AI/AN communities that includes studies of approaches to improve clinical delivery of efficacious treatments of chronic lung disease and their risk factors, improved methods of chronic lung disease self-management, studies to promote or maintain respiratory health or improved methods of rehabilitation for diseases of the lungs and airways, such as asthma, emphysema, cystic fibrosis; sleep disordered breathing, occupational lung diseases, pulmonary vascular disease or pulmonary complications of Acquired Immune Deficiency Syndrome (AIDS).

In addition to these areas of research, the NHLBI recognizes a unique and compelling need to promote diversity in the biomedical, behavioral, clinical, and social sciences research workforce. The NHLBI expects efforts to diversify the workforce to lead to:

- The recruitment of the most talented researchers from all groups;
- An improvement in the quality of the educational and training environment;
- A more balanced perspective in the determination of research priorities;
- A improved capacity to recruit subjects from diverse backgrounds into clinical research protocols; and
- An improved capacity to address and eliminate health disparities.

For more information, please contact: Jared B. Jobe, Ph.D. (Cherokee), Program Director, Clinical Applications and Prevention Branch, Division of Prevention and Population Sciences, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Suite 10018, MSC 7936, Bethesda, Maryland 20892–7936 (20817 express), *Phone:* (301) 435–0407, *Fax:* (301) 480–5158, *JobeJ@mail.nih.gov* (e-mail).

National Institute of Arthritis and Musculoskeletal and Skin Diseases (NIAMS)

Research in Osteoporosis and Other Bone Diseases, Osteoarthritis, Rheumatoid Arthritis and Skin Disease Within the NIAMS Mission

The NIAMS supports efforts to conduct research into the causes, treatment, and prevention of arthritis and musculoskeletal and skin diseases; the training of basic and clinical scientists to carry out this research; and the dissemination of research progress to improve the public health. Goals specific to the AI/AN communities involve research addressing the training of underrepresented minority AI/AN researchers and ensuring inclusion of Native communities in clinical research studies. NIAMS actively monitors the inclusion of minority populations in clinical research and will highlight any grants that specifically target AI/AN populations. The mission of the NIAMS is to support research into the causes, treatment, and prevention of arthritis and musculoskeletal and skin diseases, the training of basic and clinical scientists to carry out this research, and the dissemination of information on research progress in these diseases. Studies in these mission areas as they relate to the AI/AN population may be proposed.

For additional information about research in these areas contact: Madeline Turkeltaub, CRNP, Ph.D., Deputy Director, Extramural Program, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Blvd., Suite 800, Bethesda, MD 20912, *Phone:* (301) 594–2463, *Fax:* (301) 480–4543, *E-mail: mturkeltaub@mail.nih.gov.*

National Center for Complementary and Alternative Medicine (NCCAM)

Research on Traditional Healing Practices

Many AI/AN communities use traditional healing practices to prevent and/or treat diseases and to maintain health. NCCAM is interested in supporting research on traditional healing practices with these goals in mind. NCCAM is also interested in research on the safe and effective integration of conventional care with traditional healing practices for AI/AN communities. The methodological feasibility for integration has yet to be addressed for many traditional healing practices. Consequently, NCCAM is interested in supporting developmental studies to identify and address difficult methodological and design issues particular to traditional healing practices, as well as to allow for the development of contextually and culturally sensitive research mirroring the values of AI/AN communities.

Examples of study areas of interest include, but are not limited to:

- Qualitative research to characterize and document healing practices and diagnostic approaches of indigenous peoples, and study the feasibility of research on those practices and approaches in future clinical studies;
- Observational studies to explore patient and care provider preferences, beliefs, attitudes, and patient-provider interactions;
- Case-control, observational, and other studies to understand traditional healing strategies from multiples perspectives, including: (a) Optimal dosing, duration, and frequency of treatment; (b) type of treatment; (c) examinations of different healing practices to treat a particular disease/condition; (d) comparisons of complex versus simple interventions; (e) evaluation of adherence among patient populations to interventions with varying levels of complexity; and (f) examination of potentially important individual differences that mediate or moderate treatment outcome;
- Studies to determine if traditional healing practices can be translated into a broader clinical setting, in terms of: Reliability, responsiveness, and utility; assessment procedures, instruments, and tools in psychosocial, functional, and physiological domains;
- Studies to construct and validate culturally sensitive data collection instruments; to design and pilot outcome measures consistent with the tenets of traditional, indigenous systems of medicine and comparisons of these outcome measures to those commonly used by conventional biomedicine; and
- Health services research of established AI/AN traditional healing practices to explore the factors that influence access to and use of such therapies; the nature, cost effectiveness, and quality of such care; and ultimately the effects on health and well-being.

For additional information on NCCAM-supported research topics, contact: Peter J. Kozel, Ph.D., National Center of Complementary and Alternative Medicine, 6707 Democracy Boulevard, Suite 401, MSC 5475, Bethesda, MD 20892–5475, *Phone:* (301) 496–8004, *Fax:* (301) 480–3621, *kozelp@mail.nih.gov.*

Office of Research on Women's Health (ORWH)

Women's Health Research

The ORWH at the NIH supports research related to women's health and the study of sex and gender differences. Detailed information about the NIH Research Priorities for Women's Health, can be found at *http://orwh.od.nih.gov/research.html.*

For additional information on women's health research, contact: Lisa Begg, DrPH., RN, Director of Research Programs, NIH Office of Research on Women's Health, 6707 Democracy Blvd., Suite 400, Bethesda, MD 20892–5484, *Phone:* (301) 496–7853, *Fax:* (301) 402–1798, *beggl@od.nih.gov.*

National Institute of Mental Health (NIMH)

Research projects aimed at understanding the burden, treatment or prevention of mental disorders and Human Immunodeficiency Virus (HIV)/AIDS in AI/AN populations.

Indigenous people in the United States are disproportionately affected by mental illness and HIV infection, as are the larger racial and ethnic populations such as African Americans and Latinos. AI/ANs are highly underrepresented in the physician workforce and as researchers in health research in general, numbering fewer than one hundred.

Other factors that contribute to disparities that affect these communities include geographic isolation, poor access to health services, underutilization of health services, insufficient screening and partner management services, unique social norms, stigma and gender dynamics. Research is needed to identify and address the impact as well as the specific and unique aspects of mental disorders and HIV infection upon Native American communities. A critical component of response to mental health and HIV infection in Native American communities will be to identify, train, mentor, and develop Native American investigators. Towards these ends, a promising model is community-based participatory research together with community capacity building.

Some NIMH research areas that can contribute to scientific knowledge about mental health and HIV interventions in Native Americans includes:

- Research methods/community assessment;
- Studies of the impact of traumatic stressors, studies of patient, provider and contextual factors;
- Intervention research to evaluate the effectiveness of pharmacologic, psychosocial (psychotherapeutic and behavioral), somatic, rehabilitative and combination interventions on mental and behavior disorders-including acute and longer-term therapeutic effects on functioning for children, adolescents, and adults;
- Studies of services organization, delivery (process and receipt of care), and related health economics at the individual, clinical, program, community and systems levels in specialty mental health, general health, and other delivery settings (such as the workplace);
- Interventions to improve the quality and outcomes of care (including diagnostic, treatment, preventive, and rehabilitation services);
- Studies to enhance the research infrastructure for conducting services research; studies of clinical epidemiology of mental disorders across all clinical and service settings;
- Scientifically rigorous investigation of culturally appropriate prevention and control strategies;
- Adaptation, evaluation, safety and costs of proven interventions;
- Dissemination and implementation strategies; and,
- The role of community stakeholders in the research process, especially readiness for change.

For additional information on NIMH NonAIDS Applications contact: Carmen P. Moten, Ph.D., Chief, Primary Care, Socio Cultural and Disparities Research Programs, Division of Services and Intervention Research, National Institute of Mental Health, 6001 Executive Boulevard, Room 7131, MSC 9631, Bethesda, MD 20892–9631, *Telephone:* (301) 443–3725, *FAX:* (301) 443–4045, *E-mail: cmoten@mail.nih.gov.*

For additional information on NIMH HIV/AIDS-related applications contact: David M. Stoff, Ph.D., Chief: HIV/AIDS Neuropsychiatry Program, AIDS

Research Training and HIV/AIDS, Disparities Program, Division of AIDS and Health and Behavior Research, National Institute of Mental Health, 6001 Executive Boulevard, Room 6210, MSC 9619, Bethesda, MD 20892–9619, *Telephone:* (301) 443–4625, *FAX:* (301) 443–9719, *E-mail: dstoff@mai1.nih.gov.*

National Library of Medicine (NLM)

Biomedical Informatics and Knowledge Management

NLM supports research into how computers and networks can best be used to capture, represent, store, retrieve, manipulate, manage, and disseminate information for use in health care and public health, health education, and biomedical research. These informatics research projects must be user-centered, aimed at meeting needs of health care providers, consumers, students, researchers, and policy makers. To be user centered, information systems must be usable and useful, and information must be understandable to the audience for whom it is intended, accurate, and timely. The knowledge people need to participate in their own health care and the care of others is complex and comes from many sources. Important research questions remain to be answered about the most effective ways to bring these different sources together when and where they are needed. Informatics is by nature an interdisciplinary field, and the training of researchers for informatics careers involves coursework in the concepts and practices of information and computer science as well as in domains of health and biomedicine. NLM offers training programs at 18 academic organizations, for pre and post-doctoral trainees who wish to pursue a career in informatics. Many of these organizations offer special short-term traineeships of three months that provide a trainee with an introduction to informatics research.

For additional information about NLM programs contact: Valerie Florance, Ph.D., Deputy Director, NLM Extramural Programs, Rockledge 1, Suite 301, 6705 Rockledge Drive, Bethesda, MD 20892, *Phone:* (301) 594–4882, *Fax:* (301) 402–2952, *Web site: http://www.nlm.nih.gov/ep* NLM/NIH/DHHS.

National Institute of Biomedical Imaging and Bioengineering (NIBIB)

Research in Technology for Health

The National Institute of Biomedical Imaging and Bioengineering (NIBIB) is committed to reducing health disparities through the development of new and affordable biomedical technologies. To this end, the NIBIB is interested in supporting the translation of biomedical technologies that target the health needs of AI/AN communities. Specifically, the NIBIB is interested in supporting the development of technologies that have broad therapeutic and interventional applications as well as technologies that complement technology development in all program areas of the NIBIB, *http://www.nibib.nih.gov/Research/ProgramAreas.*

For additional information about NIBIB programs contact: John W. Haller, PhD., National Institute of Biomedical Imaging and Bioengineering, NIH/DHHS, 6707 Democracy Blvd. Suite 200, Bethesda, MD 20892–5649, *E-mail: hallerj@mail.nih.gov, Phone:* (301) 451–4780, *Fax:* (301) 480–1614.

National Eye Institute (NEI)

Vision Research

The NEI supports research and health information dissemination with the goal of protecting and prolonging the vision of the American people. Examples of such activity that may be of interest include, but are not limited to:

- Epidemiological studies to determine the prevalence and possible risk factors of eye diseases and disorders among AI/AN populations;
- Basic research studies into the causes and mechanisms of eye diseases and visual impairments in AI/AN, research into disparities in access to ophthalmic/optometric health services; and,
- Development and evaluation of culturally appropriate health education and intervention.

For additional information on vision research topics contact: Jerome R. Wujek, Ph.D., National Eye Institute, 2020 Vision Place, Bethesda, MD 20892–3655, *Phone:* (301) 451–2020, *Fax:* (301) 402–0528, *E-mail: wujekjer@nei.nih.gov.*

The omission above of any NIH institute, center, office, or research area should not be taken as a lack of availability of support for proiects in those areas. NARCH is an NIH-wide partnership, led at NIH by the National Institute of General Medical Sciences (NIGMS). General research priorities for all of the individual NIH Institutes, Centers, Divisions and Offices can be found on their respective Web sites at: *http://www.nih.gov/icd/index.html.* However, applicants and potential academic partners are reminded that that the NARCH program is focused on the research needs of the Tribes and not those of the Federal or academic partners.

Public Policy Requirements: All Federal-wide public policies apply to IHS grants with exception of Lobbying and Discrimination public policy.

3. *Submission Dates and Times:*

A. *Letter of Intent Deadline:* March 15, 2008.

Prospective applicants are asked to submit a letter of intent that includes the title of the new project(s) proposed, the name, address, and telephone number of the project Principal Investigator(s), the identities of the partners and of key personnel, and the number and title of this RFA. The letter of intent should be received before 5 p.m. Eastem Standard Time on March 15, 2008, by Mushtaq A. Khan, D.V.M., Ph.D., Chief, Digestive and Respiratory Sciences IRGs, Center for Scientific Review, MSC 7818, Room 2176; 6701 Rockledge Drive; Bethesda, MD 20892 (20817 for Fed Ex) *Phone:* (301) 435–1778; *Fax* (301) 451–2043; *E-Mail: KHANM@CSR.NIH.GOV.*

Letters may be submitted by mail, fax or e-mail. Although a letter of intent is not required, is not binding, and does not enter into the review of a subsequent application, the information that it contains allows the IHS and NIH Center for Scientific Review (CSR) staffs to estimate the potential review workload and avoid conflict of interest in the review.

B. *Application Deadline:* May 16, 2008.

The applications must be received before 5 p.m. Eastern Standard Time on May 16, 2009 at the Center for Scientific Review (CSR, National Institutes of Health, 6701 Rockledge Drive, Room 6160—MSC 7892, Bethesda, MD 20892–7720, Bethesda, MD 20817 (for express or courier service). *Telephone:* (301) 435–0715.) and at the IHS Division of Grants Operations (DGO, Indian Health Service, Reyes Building, 801 Thompson Avenue, TMP Suite 360, Rockville, MD 20852–1627 [zip code is unchanged for express/courier services], *Telephone:* (301) 443–5204). Applications received after this date will be returned to the applicant. Competing applications not meeting the deadline date specified in the announcement are considered late applications and will not be considered for funding under this announcement. The CSR will not accept any application in response to this RFA that is essentially the same as one currently pending initial review, unless the applicant withdraws the pending application. The CSR will not accept any application that is essentially the same as one already reviewed. This does not preclude the submission of substantial revisions of applications already reviewed, but such applications

must include an introductory letter addressing the previous critique.

4. *Intergovernmental Review:* This funding opportunity is not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.'' A State approval is not required.

5. *Funding Restrictions:*

• Pre-award costs are allowable pending prior approval from the awarding agency. However, in accordance with 45 CFR Part 74 all pre-award costs are incurred at the recipient's risk. The awarding office is under no obligation to reimburse such costs if for any reason the applicant does not receive an award or if the award to the recipient is less than anticipated.

• The available funds are inclusive of direct and appropriate indirect costs.

• Only one grant/cooperative agreement will be awarded per applicant under this announcement. .

• IHS will not acknowledge receipt of applications. .

• Grantees are allowed a reasonable period of time in which to submit required financial and performance reports. Failure to submit required reports within the time allowed may result in suspension or termination of an active grant, withholding of additional awards for the project, or other enforcement actions such as withholding of payments or converting to the reimbursement method of payment. Continued failure to submit required reports may result in the imposition of special award provisions, or cause other eligible projects or activities involving that grantee organization, or the individual responsible for the delinquency to not be funded. Failure to obtain prior approval for change in Scope, Principal Investigator, Grantee Institutions, Successor in Interest, or Recipient Institute Name, undertaking any activities disapproved or restricted as a condition of the award, may result in fund restrictions.

6. *Other Submission Requirements:* Each submitted research project (including pilot research projects) should be budgeted so that it could stand on its own. That is, each project should be fundable under its own budget so that it could be completed even if the rest of the NARCH is not funded. All things vital to each project should be included in the budget of that project and not included in the core. The 49 NARCH core should include only administrative, training or other items that are non-essential to the research projects. Each subcontractor participating in each project should submit its budget as part of that project's budget, using appropriate form pages from the PHS 398. Each project submission should include a set of budget pages from each of the institutional partners participating in that project. Each research project budget should explicitly include that portion of the grantee's indirect costs that are associated with activities under that project.

Submit a typed and signed original application, including the Checklist, and one single-sided photocopy of the entire application (including Appendices and supporting documents) in one package to: Division of Grants Operations, Indian Health Service, Reyes Building, 801 Thompson Avenue, TMP Suite 360, Rockville, MD 20852–1627 (zip code is unchanged for express/courier services), Telephone: (301) 443–5204.

At the time of submission, applicants must also send four additional single-sided photocopied and signed applications, including the Checklist, Appendices, and supporting documentation to: Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6160–MSC 7892, Bethesda, MD 20892–7720, Bethesda, MD 20817 (for express or courier service). *Telephone:* (301) 435–0715. The Center for Scientific Review no longer accepts hand delivered applications. E-mail or other electronic applications will not be accepted under this announcement.

Specific supplementary instructions for the PHS 398 application and budget preparation for the NARCH program may be obtained from the initiative contacts listed under VII. Agency Contacts, and will be posted at *http://www.ihs.gov/MedicalPrograms/Research/narch.cfm.*

DUNS Number

Applicants are required to have a Dun and Bradstreet (DUNS) number to apply for a grant or cooperative agreement from the Federal Government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Interested parties may wish to obtain their DUNS number by phone to expedite the process.

A DUNS number is required before Central Contractor Registry (CCR) registration can be completed. Many organizations may already have a DUNS number. Please use the number listed above to investigate whether or not your organization has a DUNS number. Registration with the CCR is free of charge.

Applicants may register by calling 1–888–227–2423. Please review and complete the CCR Registration Worksheet located at *http://www.grants.gov/CCRRegister.*

More detailed information regarding these registration processes can be found at *http://www.grants.gov.*

Application Review Information

Upon receipt, IHS and NIH staff will administratively review applications for completeness and responsiveness. Applications that are incomplete, non-responsive to this RFA, not from existing NARCH programs, or do not follow the guidelines of the PHS form 398 (revised 9/2004) or of the supplementary instructions for NARCH grants (available at: *http://www.ihs.gov/MedicalPrograms/Research/narch.cfm*), may be returned to the applicant without further consideration. Applications will be evaluated in accordance with the criteria stated below for scientific and technical merit by appropriate peer review groups convened by the CSR. The National Advisory General Medical Sciences Council will conduct the second level of review.

Criteria

Priorities for funding will be based on the scientific and technical merit of the application, the assessed potential of investigators in the developmental stages of their careers, and the likelihood that the proposed project(s) can further the purposes of the NARCH initiative. Awards will be made only to organizations with financial management systems and management capabilities that are acceptable under HHS policy. Awards will be administered under the HHS Grants Policy Statement, January 2007.

A. *Review of Student and Faculty/Researcher Development Plans:* The anticipated effectiveness of the proposed NARCH in making a difference relative to the current base-line data (based in part on previous experience of the NARCH) will be assessed. Factors to be considered include:

• The appropriateness of the content, phasing, quality, and duration of the student or faculty/researcher development plans in the NARCH application to achieve the scientific development of the faculty/researcher, post-doctoral, pre-doctoral, undergraduate, and (if well justified) high school students; and

• The research experience and expertise, proposed commitment, and quality of the mentoring plan and of individual mentors of the partners in providing mentoring, guidance, and advice to candidates (including training in responsible conduct of research and research integrity, teaching, and protection of human subjects), and in fostering the development of academic and community-based AI/AN researchers.

B. *Review of Research Projects:* The NIH has announced procedures to be used for the review of research grant applications (NIH Guide, Volume 26, Number 22, June 27, 1997, or see *http://grants.nih.gov/grants/guide/notice-files/not97-010.html* and *http://grants.nih.gov/grants/guide/notice-files/NOT–OD–05–002.html* for additional updated information. For NARCH applications, the five criteria listed in this announcement will be used for the scientific review of research projects and pilot research projects. The review of research projects and pilot research projects will be the same except that applications for pilot studies may be smaller in scope and would not be expected to have preliminary data.

In the written comments, reviewers will be asked to discuss the following aspects of the application in order to judge the likelihood that the proposed research will have a substantial impact on the pursuit of these purposes. Each of these criteria will be addressed and considered in assigning the overall score, weighting them as appropriate for each application.

• *Significance:* Does this study address an important problem? If the aims of the application are achieved, how will scientific knowledge or clinical practice be advanced? What will be the effect of these studies on the concepts, methods, technologies, treatments, services, or preventative interventions that drive this field?

• *Approach:* Are the conceptual or clinical framework, design, methods, and analyses adequately developed, well integrated, well reasoned, and appropriate to the aims of the project? Does the applicant acknowledge potential problem areas and consider alternative tactics?

• *Innovation:* Is the project original and innovative? For example: Does the project challenge existing paradigms or clinical practice; address an innovative hypothesis or critical barrier to progress in the field? Does the project develop or employ novel concepts, approaches, methodologies, tools, or technologies for this area?

• *Investigators:* Are the investigators appropriately trained and well suited to carry out this work? Is the work proposed appropriate to the experience level of the principal investigator and other researchers? Does the investigative team bring complementary and integrated expertise to the project (if applicable)?

• *Environment:* Does the scientific environment in which the work will be done contribute to the probability of success? Do the proposed studies benefit from unique features of the scientific environment, or subject populations, or employ useful collaborative arrangements? Is there evidence of institutional support?

In addition to the above criteria, in accordance with NIH policy, all applications will also be reviewed with respect to the following:

• The adequacy of plans, if research on human subjects is involved, to include both genders and children as appropriate for the scientific goals of the research. Plans for the recruitment and retention of subjects will also be evaluated.

• The reasonableness of the proposed budget and duration in relation to the proposed research.

• The adequacy of the proposed protection for humans, animals or the environment, to the extent they may be adversely affected by the project proposed in the application.

• The adequacy of the proposed plan to share data, if appropriate.

VI Award Administration Information

1. Award Notices

The Notice of Award (NoA) will be initiated by the IHS Division of Grants Operations (DGO) and will be mailed via postal mail to each entity that is approved for funding under this announcement. The NoA will be signed by the Grants Management Officer and this is the authorizing document for which funds are dispersed to the approved entities. The NoA will serve as the official notification of the grant award and will reflect the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the award, the effective date of the award, and the budget/project period. The NoA is a legally binding document. Applicants who are approved but unfunded or disapproved based on their objective review score will receive a copy of the Executive Summary which identifies the weaknesses and strengths of the application submitted.

2. Administrative and Policy Requirements

A. *Grants are administrated in accordance with the following documents:*

• This Announcement.

• *Administrative Requirements:* 45 CFR part 92, (Uniform Administrative Requirements for Grants and Cooperative Agreements to State, Local and Tribal Governments), or 45 CFR part 74, (Uniform Administrative Requirements for Awards to Institutions of Higher Education, Hospitals, Other Non-Profit Organizations, and Commercial Organizations).

• *Grants Policy Guidance:* HHS Grants Policy Statement, January 2007.

• *Cost Principles:* OMB Circular A–87, (State, Local, and Indian Title 2 Part 225).

• *Cost Principles:* OMB Circular A–122, (Non-profit Organizations Title 2 Part 230).

• *Audit Requirements:* OMB Circular A–133, (Audits of States, Local Governments, and Non-profit Organizations).

B. *Inclusion of Women and Minorities in Research Involving Human Subjects:* It is the policy of the NIH that women and members of minority groups and their subpopulations must be included in all NIH-supported biomedical, clinical, behavioral and health services research projects involving human subjects; unless a clear and compelling rationale and justification is provided that inclusion is inappropriate with respect to the health of the subjects or the purpose of the research. This policy results from the NIH Revitalization Act of 1993 (Section 492B of Pub. L. 103–43). Because the NARCH initiative targets AI/AN people and communities, a minority population, only the policy of inclusion of women applies to this RFA. The IHS has fully accepted the Office for Human Research Protections (OHRP) policy regarding human subjects. The OHRP Web site is *http://www.hhs.gov/ohrp/*. All investigators proposing research involving human subjects should read the Updated NIH Guidelines for Inclusion of Women and Minorities as Subjects in Clinical Research, published in the NIH Guide for Grants and Contracts on August 2, 2000.

• (*http://grants.nih.gov/grants/guide/notice-files/NOT-OD-00-048.html*). The complete Guidelines are available at: *http://grants1.nih.gov/grants/funding/women_min/guidelines_amended_10_2001.htm*. The revisions relate to NIH defined Phase III clinical trials and require:

• All applications or proposals and/or protocols to provide a description of plans to conduct analyses, as appropriate, to address differences by sex/gender and/or racial/ethnic groups, including subgroups if applicable; and

• All investigators to report accrual, and to conduct and report analyses, as appropriate, by sex/gender and/or racial/ethnic group differences.

C. *Inclusion of Children as Participants in Research Involving Human Subjects:* It is the policy of NIH that children (i.e., individuals under the age of 21) must be included in all human subjects research, conducted or supported by the NIH, unless there are scientific or ethical reasons not to include them. This policy applies to all initial (Type 1) applications submitted. All investigators proposing research involving human subjects should read the NIH Policy and Guidelines on the Inclusion of Children as Participants in Research Involving Human Subjects that was published in the NIH Guide for Grants and Contracts, March 6, 1998, and is available at the following URL address: *http://grants.nih.gov/grants/guide/notice-files/not98–024.html*. Investigators may obtain copies of these policies from the initiative staff listed under VII. Agency Contacts. Initiative staff may also provide additional relevant information concerning the policy.

D. *URLS in NIH Grant Applications or Appendices:* All applications and proposals for NIH funding must be self-contained within specified page limitations. Unless otherwise specified in an NIH solicitation, Internet addresses (URLs) should not be used to provide information necessary to the review because reviewers are under no obligation to view the Internet sites. Reviewers are cautioned that their anonymity may be compromised when they directly access an Internet site.

E. *Allowable Administrative Costs:* Certain administrative costs for managing a comprehensive program are allowable and may vary, depending upon the size and complexity of the program's activities. The costs budgeted for NARCH grants and subcontracts may not duplicate items already budgeted in other cost centers of the AI/AN, research-intensive, and subcontracted organizations and institutions, such as accounts which make up the Facilities and Administration (F&A) cost pool. The grantee organization receiving the award must be prepared to provide documentation showing the direct relationship of proposed costs to the program, and that costs of this type are charged in a uniform manner to all other grants at all institutions and organizations participating in the award.

Limited salary support for secretarial or clerical help is allowable only when in direct support of the proposed NARCH project. For guidance, applicants should refer to the OMB Circular appropriate for them, A–87 (Cost Principles for State, local, and Indian Tribal Governments), at *http://www.whitehouse.gov/omb/circulars* or A–122 (Cost Principles for Non-Profit Organizations), at *http://frwebgate.access.gpo.gov/cgi-bin/leaving.cgi?from=leavingFR.html&log=linklog&fxsp0;&to=http://http://www.whitehouse.gov/omb/circulars*, or should contact the grants management officer listed under VII. Agency Contacts.

Costs for evaluation activities are allowable, as are costs for the Community and Scientific Advisory Council. All applications must include costs associated with one annual meeting per year in Rockville, MD, of the project Principal Investigator(s) and their key scientific personnel. Applications should also include costs associated with attendance at the annual Indian Health Research Conference for key personnel and trainees.

Student Development Costs: Student (graduate, undergraduate, and high school if well justified) remuneration through salary/wages for participation in research experiences may be requested, provided all the following conditions are met:

I. The student is performing necessary work involved in the research;

II. There is an employer-employee relationship between the student and the proposed NARCH or its partners;

III. The total compensation is reasonable for the work performed; and

IV. It is the practice of the proposed NARCH or its partners to provide compensation for all students in similar circumstances, regardless of the source of support for the activity.

Graduate students, but not undergraduate students, are allowed tuition costs as part of a compensation package. When requesting support for a graduate student, the NARCH application should provide, in the budget justification section of the application, the basis for the compensation level. The IHS staff will review the requested compensation level and, if it is reasonable and justified, will provide compensation up to a maximum of $45,000 (*http://grants.nih.gov/grants/guide/notice-files/not98–168.html*). Post-doctoral students should be compensated at a rate commensurate with that of other post-doctoral employees with similar degrees and experience at the research-intensive institution. It is the expectation of the IHS and NIGMS that students who are enrolled in a accredited graduate program, as part of a proposed NARCH, will not be excluded from support from other non-Federal or Federal graduate training sources (such as loans and assistance under the Veterans' Adjustment Benefit Act or Pell Grants) for which they are eligible.

Graduate and post-doctoral students cannot concurrently hold other Federally-sponsored stipends or fellowship or any other Federal award that duplicates the NARCH support.

Faculty/Researcher Development Costs:

Faculty/Researcher Development Costs: Costs to support faculty/researcher development activities, such as workshops or courses, national meetings, or short-term research experiences in the laboratory of an active NIH-extramurally-funded researcher needed for acquiring specific skills or methodologies needed for prospective research, are allowable. Such costs might include tuition, travel and per diem costs, as well as salary support appropriate to the percent effort needed for the activity.

Research Project Costs: Direct costs associated with research and pilot research projects are allowable when adequate justification is provided. These include faculty/researcher salaries, reimbursed according to percent effort. Summer salary support can be paid provided the institution's academic schedule permits such release and when the institution approves. The maximum summer-salary support provided by the program cannot exceed the equivalent of three months at 100 percent effort, or time specified by the institution as its policy. Grant funds may not be used to increase or supplement faculty/researcher academic year salaries. Salary support for technical assistance and costs for consultants, if justified, are allowable. Costs for equipment to be used to carry out the proposed research are allowable.

Cost for Supplies: Costs for supplies, including costs for animals necessary to carry out the proposed research, may be included. Travel costs for the investigator(s) are permitted when direct benefits to the program are expected, and when adequate justification is provided. Alterations and renovations costs (up to $40,000) are allowable only when essential for conduct of the proposed research. Other permitted costs include animal maintenance (unit care costs and number of care days), donor fees, publication costs, computer charges, rentals and leases, equipment maintenance, and service contracts.

Consortium and Contract Arrangements: Consortium arrangements that may involve personnel costs, supplies, and other allowable costs, including F&A costs;

contractual costs for support services, such as the laboratory testing of biological materials, clinical services, data processing, or core administrative services, are allowable expenses. Consortia and contractual costs with Native health organizations, Tribes and/or research institutions in Canada or Mexico are allowable expenses.

Pilot Research Projects: The intent of pilot research projects is to lead to regular research projects funded as part of the center grant or as freestanding grants. For pilot research projects, applications may request support for up to $50,000 (direct costs) per year for up to four years. This pilot research support is non-renewable. However, NARCH research projects based on prior NARCH pilot research projects are encouraged.

Subcontracts: The grant recipient may issue subcontracts to other organizations (such as the research-intensive institution of the partnership), as long as a minimum of 30 percent of the grant funds are budgeted in the application to remain with the eligible AI/AN organization(s); that is, no more than 70 percent of the application's total budget may be contained in subcontract budgets of the non-eligible subcontracting partner institutions or organizations.

F. *Unallowable Costs:* Unallowable costs for research projects (including for pilot projects) include costs for student development, textbooks, journals, memberships, and Internet subscription costs, as well as other costs prohibited by OMB Circulars A–87 or A–122 as applicable. Employees of the applicant organization may not serve as paid consultants but may be paid. The pilot research project is intended for faculty/researcher without current Federal research support. Therefore, investigators with significant current. support from other mechanisms such as the RO1 and research funding from other extramural sources are not eligible, and the costs therefore are not allowable. Release time for preparing proposals or mini-research projects, not submitted as pilot projects, is not allowed.

G. *Research Subjects Protection:* Under governing policy, Federal funds administered by the HHS shall not be expended for research involving live vertebrate animals without prior approval by the NIH Office of Laboratory Animal Welfare (OLAW), of an assurance to comply with the Public Health Service (PHS) Policy on Humane Care and Use of Laboratory Animals. This restriction applies to all performance sites (e.g., collaborating institutions, subcontractors, subgrantees) without OLAW-approved assurances, whether domestic or foreign. Funds included in this award may not be used to support studies using live vertebrate animals until approval from the Institutional Animal Care and Use Committee (IACUC) has been received by the IHS Grants Management Officer (GMO).

Federal Regulations (45 CFR, Pt. 46) require that applications and proposals involving human subjects must be evaluated with reference to the risks to the subjects, the adequacy of protection against these risks, the potential benefits of the research to the subjects and others, and the importance of the knowledge gained or to be gained. Under governing regulations 45 CFR Part 46, found at *http://www.hhs.gov/ohrp/humansubjects/guidance/45cfr46.htm*. Federal funds administered by HHS shall not be expended for research involving human subjects, and individuals shall not be enrolled in such research, without prior approval by the Office for Human Research Protections (OHRP), of an appropriate Federal Wide Assurance (FWA) and prior approval by an Institutional Review Board (IRB) recognized and listed by the OHRP. Funds included in this award may not be used to support studies using human subjects until evidence of IRB approval has been received by the IHS GMO. Applicants are expected to provide their own institutional FWA.

H. Research Integrity—Grantees shall comply with Public Health Service Policies on Research Misconduct (42 CFR Part 93) which require grantees to have procedures for responding to allegations of research misconduct that comply with those policies, to submit their procedures to the Office of Research Integrity (ORI) (*http://ori.hhs.gov*) upon request for review, and revise their procedures in accordance with ORI comments. In addition, grantees shall file the Annual Report on Possible Research Misconduct with ORI at *http://www.ori.dhhs.gov/assurance/electronic_submission.shtml*. Grantees shall file documentation of their Annual Reports with the IHS GMO.

1. *Healthy People 2010:* The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2010, a PHS led national activity for setting priority areas. This RFA announcement is related to one or more of the priority areas. Potential applicants may obtain a copy of Healthy People 2010 at: *http://www.healthypeople.gov*.

3. *Indirect Costs:* This section applies to all grant recipients that request reimbursement of indirect costs in their grant application, but not to the indirect costs that may be negotiated by the grantees with their subcontractors (which become direct costs to the grantee). In accordance with HHS Grants Policy Statement, Part II–27, IHS requires applicants to have a current indirect cost rate agreement in place prior to award. The rate agreement must be prepared in accordance with the applicable cost principles and guidance as provided by the cognizant agency or office. A current rate means the rate covering the applicable activities and the award budget period. If the current rate is not on file with the DGO at the time of award, the indirect cost portion of the budget will be restricted and not available to the recipient until the current rate is provided to DGO.

Generally, indirect costs rates for IHS grantees are negotiated with the Division of Cost Allocation (DCA) *http://rates.psc.gov/* and the Department of Interior (National Business Center) *http://www.nbc.gov/acquisition/ics/icshome.html*. If your organization has questions regarding the indirect cost policy, please contact the DGO at (301) 443–5204.

4. Reporting

A. Progress Report. Program progress reports are required semi annually. These reports will include a brief comparison of actual accomplishments to the goals established for the period, or, if applicable, provide sound justification for the lack of progress, and other pertinent information as required. A final progress report, cumulative from the beginning of the project period, must be submitted within 90 days of expiration of each budget period.

B. Financial Status Report. Quarterly financial status reports must be submitted within 30 days of the end of each quarter. Final financial status reports are due within 90 days of expiration of the budget/project period. Standard Form 269 (long form) will be used for financial reporting.

C. Reports. Grantees are responsible and accountable for accurate reporting of the Progress Reports and Financial Status Reports. Financial Status Reports (SF–269) are due 90 days after each budget period and the final SF–269 must be verified from the grantee records on how the value was derived. Grantees must submit reports in a reasonable period of time.

Failure to submit required reports within the time allowed may result in suspension or termination of an active grant, withholding of additional awards for the project, or other enforcement

actions such as withholding of payments or converting to the reimbursement method of payment. Continued failure to submit required reports may result in one or both of the following: (1) The imposition of special award provisions; and (2) the non-funding or non-award of other eligible projects or activities. This applies whether the delinquency is attributable to the failure of the grantee organization or the individual responsible for preparation of the reports.

5. Telecommunication for the hearing impaired is available at: TTY (301) 443–6394.

Agency Contact(s)

1. Questions on the initiative, regarding IHS NARCH issues and policies, may be directed to: Alan Trachtenberg, MD, MPH, Division of Planning, Evaluation and Research, Indian Health Service, 801 Thompson Avenue, TMP Suite 450, Rockville, MD 20852, *Telephone:* (301) 443–4700, *Fax:* (301) 443–0114, e-mail: *narch@ihs.gov*.

2. Questions on grants management and fiscal matters may be directed to: Sylvia Ryan, Division of Grants Operations, Indian Health Service, Reyes Building, 801 Thompson Avenue, TMP Suite 350, Rockville, MD 20852, *Telephone:* (301) 443–5204, *Fax:* (301) 443–9602, e-mail: *narch@ihs.gov*.

3. Questions on NIGMS issues and policies, may be directed to: Clifton A. Poodry, Ph.D., Minority Opportunities in Research Division, National Institute of General Medical Sciences, 45 Center Drive, Suite 2AS.37, MSC 6200, Bethesda, MD 20892, *Telephone:* (301) 594–3900, *Fax:* (301) 480–2753, e-mail: *poodryc@nigms.nih.gov*.

4. Questions on the review of applications may be directed to: Mushtaq A. Khan, D.V.M., Ph.D., Chief, Digestive and Respiratory Sciences IRGs, Center for Scientific Review, MSC 7818, Room 2176; 6701 Rockledge Drive; Bethesda, MD 20892 (20817 for courier or express service) *Telephone:* (301) 435–1778; *Fax:* (301) 451–2043; e-mail: *khanm@csr,nih.gov*.

Other required documents

If the applicant is a Federally-recognized Tribe, Tribal organization, or a Tribal college letters of support from the Chairman, President, Governor or Tribal Health Director is required of all Tribes to be served to show their support of the grant project. Letters of support are intended to document that applicants have Tribal support for the specific grant for which they are applying. All letters of support must accompany the grant application.

Other Information

References for Background Information:

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Dated: January 16, 2008.

Robert G. McSwain,

Acting Director, Indian Health Service.

[FR Doc. 08–243 Filed 01–23–08; 8:45 am]

BILLING CODE 4165–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Solicitation of Information and Recommendations for Revising the Compliance Program Guidance for Nursing Facilities

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice.

SUMMARY: This **Federal Register** notice seeks the input and recommendations of interested parties as OIG revises the compliance program guidance (CPG) for nursing facilities, especially those serving Medicare, Medicaid, and other Federal health care program beneficiaries. The nursing home industry has experienced a number of changes since OIG first published a CPG in this area (65 FR 14289; March 16, 2000). Additionally, the subsequent years of enforcement and compliance activity in the nursing home industry has allowed OIG to address more fully the various risk areas in nursing home compliance. In evaluating the contents of the nursing facility CPG, OIG is soliciting comments, recommendations, and other suggestions from concerned parties and organizations on how best to revise the nursing facility CPG to address relevant compliance issues. Specifically, OIG seeks comments addressing any changes to existing risk areas and introducing any new risk areas.

DATES: To assure consideration, comments must be delivered to the address provided below by no later than 5 p.m. on February 25, 2008.

ADDRESSES: In commenting, please refer to file code OIG–126–N. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

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

1. *Electronically.* You may submit electronic comments on specific recommendations and suggestions through the Federal eRulemaking Portal at *http://www.regulations.gov*. (Attachments should be in Microsoft Word, if possible.)

2. *By regular, express, or overnight mail.* You may send written comments to the following address: Office of Inspector General, Department of Health and Human Services, Attention: OIG–126–N, Room 5246, Cohen Building, 330 Independence Avenue, SW., Washington, DC 20201. Please allow sufficient time for mailed comments to

be received before the close of the comment period.

3. *By hand or courier.* If you prefer, you may deliver, by hand or courier, your written comments before the close period to Office of Inspector General, Department of Health and Human Services, Cohen Building, 330 Independence Avenue, SW., Washington, DC 20201. Because access to the interior of the Cohen Building is not readily available to persons without Federal Government identification, commenters are encouraged to schedule their delivery with one of our staff members at (202) 358–3141.

Inspection of Public Comments: All comments received before the end of the comment period are available for viewing by the public. All comments will be posted on *http://www.regulations.gov* as soon as possible after they have been received. Comments received timely will also be available for public inspection as they are received at Office of Inspector General, Department of Health and Human Services, Cohen Building, 330 Independence Avenue, SW., Washington, DC 20201, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone (202) 619–0089.

FOR FURTHER INFORMATION CONTACT: Joel Schaer, OIG Regulations Officer, (202) 619–0089; Amanda Walker, Office of Counsel to the Inspector General, (202) 619–0335; or Catherine Hess, Office of Counsel to the Inspector General, (202) 619–1306.

SUPPLEMENTARY INFORMATION: The development of CPGs is a major initiative of OIG in its effort to engage the private health care industry in addressing and combating fraud and abuse. Over the past several years, OIG has developed and issued CPGs directed at various segments of the health care industry. These guidances are designed to provide clear direction and assistance to specific sections of the health care industry that are interested in addressing compliance with Federal health care program requirements.

The CPGs set forth OIG's suggestions on how providers can most effectively establish internal controls and implement monitoring procedures to identify, correct, and prevent potentially fraudulent conduct. The suggestions contained in the CPGs are not mandatory for providers, nor do they represent an exclusive discussion of the advisable elements of a compliance program.

Through this **Federal Register** notice, OIG is seeking input from interested parties as OIG considers revising the CPG for the nursing home industry. OIG will consider all comments, recommendations, and suggestions received within the time frame indicated above. OIG would appreciate specific comments, recommendations, and suggestions on risk areas for the nursing home industry, such as the submission of false claims, as well as quality of care concerns, kickbacks, and accurate reporting of data to Medicare and Medicaid. Detailed justifications and empirical data supporting any suggestions would be appreciated.

We request that any comments, recommendations, or suggestions be submitted in a format that addresses the topics outlined above in a concise manner rather than in the form of a comprehensive draft guidance that mirrors previous CPGs.

Dated: January 16, 2008.

Daniel R. Levinson,

Inspector General.

[FR Doc. E8–1213 Filed 1–23–08; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2007–29053]

Collection of Information Under Review by Office of Management and Budget: OMB Control Numbers: 1625–0024, 1625–0036, 1625–0061, and 1625–0100

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this request for comments announces that the U.S. Coast Guard is forwarding four Information Collection Requests (ICRs), abstracted below, to the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) requesting an extension of their approval for the following collections of information:

(1) 1625–0024, Safety Approval of Cargo Containers; (2) 1625–0036, Plan Approval and Records for U.S. and Foreign Tank Vessels Carrying Oil in Bulk; (3) 1625–0061, Commercial Fishing Industry Vessel Safety Regulations; and (4) 1625–0100, Advance Notice of Vessel Arrival. Our ICRs describe the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: Please submit comments on or before February 25, 2008.

ADDRESSES: To make sure your comments and related material do not enter the Coast Guard docket [USCG–2007–29053] or OIRA more than once, please submit them by only one of the following means:

(1) Electronic submission. (a) To Coast Guard docket at *http://www.regulations.gov*. (b) To OIRA by e-mail to: *nlesser@omb.eop.gov*.

(2) Mail or Hand delivery. (a) To Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001. Hand deliver between the hours of 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329. (b) To OIRA, 725 17th Street, NW., Washington, DC 20503, to the attention of the Desk Officer for the Coast Guard.

(3) Fax. (a) To Docket Management Facility at 202–493–2251 (b) To: OIRA at 202–395–6566. To ensure your comments are received in time, mark the fax to the attention of Mr. Nathan Lesser, Desk Officer for the Coast Guard.

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://www.regulations.gov*.

Copies of complete ICRs are available through this docket on the Internet at *http://www.regulations.gov*. Additionally, copies are available from Commandant (CG–611), U.S. Coast Guard Headquarters, (Attn: Mr. Arthur Requina), 2100 2nd Street, SW., Washington, DC 20593–0001. The telephone number is 202–475–3523.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur Requina, Office of Information Management, telephone 202–475–3523 or fax 202–475–3929, for questions on these documents. Contact Ms. Renee V. Wright, Program Manager, Docket Operations, 202–366–9826, for questions on the docket.

SUPPLEMENTARY INFORMATION: The Coast Guard invites comments on whether these information collection requests

should be granted based on it being necessary in the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collections; (2) the accuracy of the estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of information subject to the collections; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology.

Comments to the Coast Guard or OIRA must contain the OMB Control Number of the ICRs addressed. Comments to the Coast Guard must contain the docket number [USCG 2007–29053]. For your comments to OIRA to be considered, it is best if OIRA receives them on or before the February 25, 2008.

Public participation and request for comments: We encourage you to respond to this request by submitting comments and related materials. We will post all comments received, without change, to *http://www.regulations.gov*. They will include any personal information you provide. We have an agreement with DOT to use their Docket Management Facility. Please see the paragraph on DOT's ''Privacy Act Policy'' below.

Submitting comments: If you submit a comment, please include the docket number [USCG–2007–29053]; indicate the specific section of the document to which each comment applies, providing a reason for each comment. We recommend you include your name, mailing address, an e-mail address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit them by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change the documents supporting this collection of information or even the underlying requirements in view of them.

The Coast Guard and OIRA will consider all comments and material received during the comment period. We may change the documents supporting this collection of information or even the underlying requirements in view of them.

Viewing comments and documents: Go to *http://www.regulations.gov* to view documents mentioned in this notice as being available in the docket. Click on ''Search for Dockets,'' and enter the docket number (USCG–2007–29053) in the Docket ID box, and click enter. You may also visit the Docket Management Facility in room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Privacy Act Statement of DOT in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://DocketsInfo.dot.gov*.

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard has published the 60-day notice (72 FR 57053, October 5, 2007) required by 44 U.S.C. 3506(c)(2). That notice elicited no comments.

Information Collection Request

1. *Title:* Safety Approval of Cargo Containers.

OMB Control Number: 1625–0024.

Type of Request: Extension of a currently approved collection.

Affected Public: Owners and manufacturers of containers and organizations the Coast Guard delegates to act as an approval authority.

Abstract: This collection of information addresses the reporting/recordkeeping requirements for containers in 49 CFR parts 450 through 453. These rules are necessary since the U.S. is signatory to the International Convention for Safe Containers (CSC), which requires all containers to be safety approved prior to being used in trade. These rules prescribe only the minimum requirements of the CSC.

Burden Estimate: The estimated burden has increased from 73,272 hours to 105,920 hours a year.

2. *Title:* Plan Approval and Records for U.S. and Foreign Tank Vessels Carrying Oil in Bulk.

OMB Control Number: 1625–0036.

Type of Request: Extension of a currently approved collection.

Affected Public: Owners and operators of vessels.

Abstract: Section 3703 of 46 U.S.C. provides the Coast Guard with the authority to regulate design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels carrying oil in bulk. See 33 CFR part 157, Rules for the Protection of the Marine Environment Relating to Tank Vessels Carrying Oil in Bulk, and 46 CFR chapter I, subchapter D, Tank Vessels.

Burden Estimate: The estimated burden has increased from 582 hours to 1,253 hours a year.

3. *Title:* Commercial Fishing Industry Vessel Safety Regulations.

OMB Control Number: 1625–0061.

Type of Request: Extension of a currently approved collection.

Affected Public: Owners, agents, individuals-in-charge of commercial fishing vessels, and insurance underwriters.

Abstract: Under the authority of 46 U.S.C. 6104, the Coast Guard has promulgated regulations in 46 CFR part 28 to improve the overall safety of commercial fishing industry vessels. The rules allowing the collection provide a means of verifying compliance and enhancing safe operation of fishing vessels.

Burden Estimate: The estimated burden has decreased from 7,720 hours to 5,917 hours a year.

4. *Title:* Advance Notice of Vessel Arrival.

OMB Control Number: 1625–0100.

Type of Request: Extension of a currently approved collection.

Affected Public: Vessel owners and operators.

Abstract: This information is required under 33 CFR part 160 subpart C to control vessel traffic, develop contingency plans, and enforce regulations.

Burden Estimate: The estimated burden has increased from 175,525 hours to 199,889 hours a year.

Dated: January 14, 2008.

D.T. Glenn,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. E8–1132 Filed 1–23–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2008–0034]

Application for Recertification of Prince William Sound Regional Citizens' Advisory Council

AGENCY: Coast Guard, DHS.

ACTION: Notice of availability; request for comments.

SUMMARY: The Coast Guard announces the availability of and seeks comments on the application for recertification submitted by the Prince William Sound Regional Citizens' Advisory Council (PWSRCAC) for March 1, 2008, through February 28, 2009. Under the Oil Terminal and Tanker Environmental Oversight Act of 1990, the Coast Guard may certify on an annual basis, an alternative voluntary advisory group in lieu of a Regional Citizens' Advisory Council for Prince William Sound, Alaska. This advisory group monitors the activities of terminal facilities and crude oil tankers under the Prince William Sound program established by the statute. The current certification for PWSRCAC will expire February 29, 2008.

DATES: Public comments on PWSRCAC's recertification application must reach the Seventeenth Coast Guard District on or before February 25, 2008.

ADDRESSES: Comments should be mailed to the Seventeenth Coast Guard District (dpi), P.O. Box 25517, Juneau, AK 99802–5517. Or, hand carried documents may be delivered to the Juneau Federal Building, 709 West 9th Street, Room 753, Juneau, AK between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

The Seventeenth Coast Guard District maintains the public docket for this recertification process. The application and comments regarding recertification will become part of this docket and will be available for inspection or copying at the Juneau Federal Building, 709 West 9th Street, Room 753, Juneau, AK.

A copy of the application will also be available for inspection at the PWSRCAC offices at 3709 Spenard Road, Anchorage, AK between the hours of 8 a.m. and 5 p.m., Monday through Friday, except federal holidays. PWSRCAC's telephone number is (907) 277–7222.

FOR FURTHER INFORMATION CONTACT: For questions on viewing or submitting material to the docket, contact LT Ken Phillips, Seventeenth Coast Guard District (dpi), (907) 463–2821.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to submit written data, views, or arguments. We solicit comments from interested groups including oil terminal facility owners and operators, owners and operators of crude oil tankers calling at terminal facilities, and fishing, aquacultural, recreational and environmental citizens groups, concerning the recertification application of PWSRCAC. Persons submitting comments should include their names and addresses, identify this notice (USCG–2008–0034), the specific section of the document to which each comment applies, and give the reason for each comment. Please submit all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgement of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to Commander (dp), Seventeenth Coast Guard District, P.O. 25517, Juneau, AK 99802–5517. The request should include reasons why a hearing would be beneficial. If there is sufficient evidence to determine that oral presentations will aid this recertification process, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Coast Guard published guidelines on December 31, 1992 (57 FR 62600) to assist groups seeking recertification under the Oil Terminal and Oil Tanker Environmental Oversight and Monitoring Act of 1990 (33 U.S.C. 2732) (the Act). The Coast Guard issued a policy statement on July 7, 1993 (58 FR 36504) to clarify the factors that the Coast Guard would be considering in making its determination as to whether advisory groups should be certified in accordance with the Act; and the procedures which the Coast Guard would follow in meeting its certification responsibilities under the Act. Most recently, on September 16, 2002 (67 FR 58440) the Coast Guard changed its policy on recertification procedures for regional citizen's advisory council by requiring applicants to provide comprehensive information every 3 years. For the 2 years in between, applicants only submit information describing substantive changes to the information provided at the last triennial recertification. This is the year in this triennial cycle that PWSRCAC must provide comprehensive information.

At the conclusion of the comment period, February 25, 2008, the Coast Guard will review all application materials and comments received and will take one of the following actions:

(a) Recertify the advisory group under 33 U.S.C. 2732(o);

(b) Issue a conditional recertification for a period of 90 days, with a statement of any discrepancies, which must be corrected to qualify for recertification for the remainder of the year; or

(c) Deny recertification of the advisory group if the Coast Guard finds that the group is not broadly representative of the interests and communities in the area or is not adequately fostering the goals and purposes of 33 U.S.C. 2732.

The Coast Guard will notify PWSRCAC by letter of the action taken on their respective applications. A notice will be published in the **Federal Register** to advise the public of the Coast Guard's determination.

Dated: January 7, 2008.

Arthur E. Brooks,

Rear Admiral, U.S. Coast Guard, Commander, Seventeenth Coast Guard District.

[FR Doc. 08–284 Filed 1–18–08; 3:58 pm]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3282–EM]

Kansas; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency for the State of Kansas (FEMA–3282–EM), dated December 12, 2007, and related determinations.

EFFECTIVE DATE: December 19, 2007.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this emergency is closed effective December 19, 2007.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis

Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–1222 Filed 1–23–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1734–DR]

Washington; Amendment No. 7 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Washington (FEMA–1734–DR), dated December 8, 2007, and related determinations.

EFFECTIVE DATE: January 11, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Willie G. Nunn, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of Thomas P. Davies as Federal Coordinating Officer for this disaster.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–1210 Filed 1–23–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket No. FEMA–2008–0002]

National Advisory Council

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice of Federal Advisory Committee Meeting.

SUMMARY: This notice announces the date, time, location and agenda for the next meeting of the National Advisory Council (NAC). At the meeting, new members will be introduced and sworn in. The meeting will be open to the public.

DATES: *Meeting Dates:* Tuesday, February 12, 2008, 8:30 a.m. to 5 p.m. and Wednesday, February 13, 2008, 8:30 a.m. to 3:30 p.m. A public comment period will take place on the afternoon of February 13, 2008 between 2:15 p.m. and 2:45 p.m.

Comment Date: Written comments or requests to make oral presentations must be received by February 5, 2008.

ADDRESSES: The meeting will be held at the Washington Marriott Hotel, 1221 22nd Street, NW., Washington, DC 20037 in the Georgetown I/II meeting rooms. Persons wishing to make an oral presentation or who are unable to attend or speak at the meeting may submit written comments. Written comments and requests to make oral presentations at the meeting should be provided to the Designated Federal Officer, Alyson Price, at the address listed below and must be received by February 5, 2008. All submissions received must include the docket number: FEMA–2008–0002 and may be submitted by any one of the following methods:

Federal Rulemaking Portal: http://www.regulations.gov. Follow instructions for submitting comments on the Web site.

E-mail: FEMA-RULES@dhs.gov. Include docket number in the subject line of the message.

Facsimile: (866) 466–5370.

Mail: Alyson Price, Designated Federal Officer, Federal Emergency Management Agency, 500 C Street, SW., (E Street, 3rd Floor), Washington, DC 20472.

Hand Delivery/Courier: National Advisory Council, DFO c/o Rules Docket Clerk, Office of the Chief Counsel, Federal Emergency Management Agency, Room 835, 500 C Street, SW., Washington, DC 20472.

Instructions: All submissions received must include the docket number: FEMA–2008–0002. Comments received will also be posted without alteration at *http://www.regulations.gov*, including any personal information provided.

Docket: For access to the docket to read background documents or comments received by the National Advisory Council, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Alyson Price, Designated Federal Officer, Federal Emergency Management Agency, 500 C Street, SW., (E Street, 3rd Floor), Washington, DC 20472, telephone 202–646–3746, fax 202–646–3061, and e-mail *Alyson.Price@dhs.gov.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act (FACA), Public Law 92–463, as amended (5 U.S.C. App. 1 *et seq.*). The NAC will be holding this meeting on Tuesday and Wednesday, February 12 and 13, 2008 in Georgetown I/II of the Washington Marriott Hotel, 1221 22nd Street, NW., Washington, DC 20037.

Tentative Agenda of Council Meeting, February 12–13, 2008

Tuesday, February 12, 2008

(1) Introduction and swearing-in of new members;
(2) Highlights/Updates from FEMA Headquarters;
(3) NAC Operations Overview;
(4) FEMA Administrator's remarks; and
(5) Council Discussion.

Wednesday, February 13, 2008

(1) Summary of previous day;
(2) Council Discussion;
(3) Public comment period; and
(4) Closing remarks/Next steps.

A final agenda will be posted on the NAC Web site prior to the meeting at *http://www.fema.gov/about/nac/.*

A public comment period will take place on February 13, 2008, between 2:15 p.m. and 2:45 p.m.

Public Attendance: The meeting is open to the public. Persons with disabilities who require special assistance should advise the Designated Federal Officer of their anticipated special needs as early as possible. Members of the public who wish to make comments on the afternoon of

Wednesday, February 13, 2008 are requested to register in advance. In order to allow as many people as possible to speak, speakers are requested to limit their remarks to three minutes. For those wishing to submit written comments, please follow the procedure noted above.

Dated: January 17, 2008.

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–1220 Filed 1–23–08; 8:45 am]

BILLING CODE 9110–21–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1739–DR]

Nebraska; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Nebraska (FEMA–1739–DR), dated January 11, 2008, and related determinations.

EFFECTIVE DATE: January 11, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated January 11, 2008, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Nebraska resulting from a severe winter storm during the period of December 10–12, 2007, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of Nebraska.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, except for any particular projects that are eligible for a higher Federal cost-sharing percentage under the FEMA Public Assistance Pilot Program instituted pursuant to 6 U.S.C. § 777. If Other Needs Assistance under Section 408 of the Stafford Act is later requested and warranted, Federal funding under that program also will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Justo Hernandez, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

The following areas of the State of Nebraska have been designated as adversely affected by this declared major disaster:

Gage, Jefferson, Johnson, Nemaha, Otoe, Pawnee, Richardson, and Thayer Counties for Public Assistance.

All counties within the State of Nebraska are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–1223 Filed 1–23–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1738–DR]

Nevada; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Nevada (FEMA–1738–DR), dated January 8, 2008, and related determinations.

EFFECTIVE DATE: January 10, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective January 10, 2008.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–1226 Filed 1–23–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1733–DR]

Oregon; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Oregon (FEMA–1733–DR), dated December 8, 2007, and related determinations.

EFFECTIVE DATE: January 15, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Oregon is hereby amended to include the following area among those

areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of December 8, 2007.

The Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians located within Coos County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–1231 Filed 1–23–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[Docket No. USCBP–2008–0001]

Notice of Meeting of the Departmental Advisory Committee on Commercial Operations of Customs and Border Protection and Related Homeland Security Functions (COAC)

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security (DHS).

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Departmental Advisory Committee on Commercial Operations of U.S. Customs and Border Protection and Related Homeland Security Functions (popularly known as ''COAC'') will meet on February 13, 2008 in Tucson, AZ. The meeting will be open to the public.

DATES: COAC will meet Wednesday, February 13th from 1 p.m. to 5 p.m. Please note that the meeting may close early if the committee has completed its business.

ADDRESSES: The meeting will be held at the JW Marriott Starr Pass Resort & Spa, 3800 W. Starr Blvd., Tucson, AZ 85745. Written material and comments should reach the contact person listed below by February 7th. Requests to have a copy of your material distributed to each member of the committee prior to the meeting should reach the contact person at the address below by February 7, 2008. Comments must be identified by USCBP–2008–0001 and may be submitted by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: traderelations@dhs.gov.* Include the docket number in the subject line of the message.
- *Fax:* 202–344–2064.
- *Mail:* Ms. Wanda Tate, Office of International Affairs and Trade Relations, U.S. Customs and Border Protection, Department of Homeland Security, Room 8.5C, Washington, DC 20229.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received by the COAC, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Wanda Tate, Office of International Affairs and Trade Relations, U.S. Customs and Border Protection, Department of Homeland Security, 1300 Pennsylvania Ave., NW., Room 8.5C, Washington, DC 20229; *traderelations@dhs.gov*; telephone 202–344–1440; facsimile 202–344–2064.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (5 U.S.C., app.), DHS hereby announces the meeting of the Departmental Advisory Committee on Commercial Operations of U.S. Customs and Border Protection and Related Homeland Security Functions (COAC). COAC is tasked with providing advice to the Secretary of Homeland Security, the Secretary of the Treasury, and the Commissioner of U.S. Customs and Border Protection (CBP) on matters pertaining to the commercial operations of CBP and related functions within DHS or the Department of the Treasury.

The fifth meeting of the tenth term of COAC will be held at the date, time and location specified above. A tentative agenda for the meeting is set forth below.

Tentative Agenda

1. Secure Freight Initiative/Advance Trade Data (10+2).
2. International Container Security.
3. C–TPAT (Customs-Trade Partnership Against Terrorism).
4. ITDS (International Trade Data System).
5. International Trade Issues/Updates.
6. Import Safety.
7. Intellectual Property Rights.
8 . World Customs Organization Updates.

Procedural

This meeting is open to the public. Please note that the meeting may close early if all business is finished.

Participation in COAC deliberations is limited to committee members, Department of Homeland Security officials, and persons invited to attend the meeting for special presentations.

All visitors to the hotel must check-in with CBP officials at registration held in the lobby at the JW Marriott Starr Pass Resort & Spa. Since seating is limited, all persons attending this meeting should provide notice, preferably by close of business Thursday, February 8, 2008, to Ms. Wanda Tate, Office of Trade Relations, U.S. Customs and Border Protection, Department of Homeland Security, Washington, DC 20229, telephone 202–344–1440; facsimile 202–344–2064.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Ms. Wanda Tate as soon as possible.

Dated: January 18, 2008.

Michael C. Mullen,

Assistant Commissioner, Office of International Affairs and Trade Relations, U.S. Customs and Border Protection.

[FR Doc. E8–1214 Filed 1–23–08; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

[USCBP–2007–0083]

Proposed Interpretation of the Expression ''Sold for Exportation to the United States'' for Purposes of Applying the Transaction Value Method of Valuation in a Series of Sales

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed interpretation; solicitation of comments.

SUMMARY: ''Transaction value'' is the primary method of appraising imported merchandise and is defined in 19 U.S.C. 1401a as ''the price actually paid or payable for merchandise when sold for

exportation to the United States,'' plus specified additions to that amount. This document provides notice to interested parties that Customs and Border Protection (CBP) proposes a new interpretation of the phrase ''sold for exportation to the United States'' for purposes of applying the transaction value method of valuation in a series of sales importation scenario. CBP proposes that in a transaction involving a series of sales, the price actually paid or payable for the imported goods when sold for exportation to the United States is the price paid in the last sale occurring prior to the introduction of the goods into the United States, instead of the first (or earlier) sale. Under this proposal, transaction value will normally be determined on the basis of the price paid by the buyer in the United States. This proposed interpretation reflects the conclusions of the Technical Committee on Customs Valuation as set forth in Commentary 22.1, entitled *''Meaning of the Expression 'Sold for Export to the Country of Importation' in a Series of Sales.''*

DATES: Comments must be received on or before March 24, 2008.

ADDRESSES: You may submit comments, identified by docket number USCBP 2007–0083, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments via docket number USCBP 2007–0083.
- *Mail:* Trade and Commercial Regulations Branch, Customs and Border Protection, 1300 Pennsylvania Avenue, NW. (Mint Annex), Washington, DC 20229.

Instructions: All submissions received must include the agency name and docket number for this proposed interpretive rule. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* Submitted comments may also be inspected during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Trade and Commercial Regulations Branch, Customs and Border Protection, 799 9th Street, NW., 5th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Joseph Clark at (202) 572–8768.

FOR FURTHER INFORMATION CONTACT: Lorrie Rodbart, Valuation and Special Programs Branch, Regulations and Rulings, Office of International Trade, (202) 572–8740.

SUPPLEMENTARY INFORMATION:

Public Participation

Interested persons are invited to submit written data, views, or arguments on all aspects of the proposed interpretation. If appropriate to a specific comment, the commenter should reference the specific portion of the proposed interpretation, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

Background

I. Transaction Value—The Valuation Agreement and U.S. Value Law

The Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade (GATT) (Valuation Agreement) sets forth the methods for determining the value of imported goods.[1] The General Introductory Commentary to the Valuation Agreement provides that the primary basis for customs value is ''transaction value'' as defined in Article 1. Article 1 provides that the customs value of imported merchandise ''shall be the transaction value, that is the price actually paid or payable for the goods when *sold for export to the country of importation,* adjusted in accordance with the provisions of Article 8. * * *'' [Emphasis added] The Agreement does not define the phrase ''sold for export to the country of importation.''

Under the U.S. value law, set forth at 19 U.S.C. 1401a, transaction value is also the primary method of determining the appraised value.[2] The U.S. value law substantively incorporates the definitions of ''transaction value'' and ''price actually paid or payable'' contained in the Valuation Agreement. The statutory additions that form part of transaction value are the ones provided for in Article 8 of the Valuation Agreement. Neither 19 U.S.C. 1401a, nor the implementing regulations set forth in part 152 of title 19 of the Code of Federal Regulations (19 CFR part 152), defines the phrase ''sold for exportation to the United States.''

II. Determining Transaction Value in a Series of Sales Situation

When the import transaction involves only one sale, it is generally easy to identify the sale for exportation to the United States for purposes of determining the price actually paid or payable. In that situation, there is only one buyer, usually located in the United States, and one seller, usually located in another country. Difficulties arise when the import transaction involves a series of sales.

Since it is common for import transactions to involve multiple parties and multiple sales, the issue of which sale must be used to calculate the price actually paid or payable arises frequently. Although this series of sales issue is critical to the proper determination of transaction value, the statute does not explicitly address this question.

CBP's current interpretation is to base transaction value on the price paid by the buyer in the first or earlier sale (*e.g.*, the sale between the manufacturer and the intermediary) provided the importer can establish by sufficient evidence that this was an arm's length sale and that, at the time of such sale, the merchandise was clearly destined for exportation to the United States. *See* T.D. 96–87, vols. 30/31 Cust. B. & Dec. Nos. 52/1 (January 2, 1997); Customs Informed Compliance Publication, entitled *Bona Fide Sales and Sales for Exportation to the United States,* and; numerous CBP rulings.[3] Application of this ''first-sale'' principle often results in the transaction value being determined on the basis of the price paid by a foreign buyer to a foreign seller. CBP has reassessed this current interpretation in light of a recent decision issued by the Technical Committee on Customs Valuation.

[1] This Agreement was one of the codes resulting in 1979 from the Multilateral Trade Negotiations in GATT and provides a detailed set of valuation rules. These rules expanded and gave greater precision to the general valuation principles established in the GATT. The United States enacted the provisions of this Agreement into U.S. law in the Trade Agreements Act of 1979 (TAA), Public Law 96–39, 93 Stat. 144, codified at 19 U.S.C. 1401a. *See also* 19 U.S.C. 2503(a) and (c)(1). As a result of the 1994 Agreement establishing the World Trade Organization (WTO), the Agreement on Implementation of Article VII of the GATT is now commonly referred to as the WTO Valuation Agreement. For ease of reference, this document will refer to this Agreement as the Valuation Agreement. All Members of the WTO are required to implement and apply the provisions of the Valuation Agreement.

[2] Transaction value is the price actually paid or payable for the merchandise when sold for exportation to the United States plus specified amounts. *See* 19 U.S.C. 1401a(b)(1).

[3] The informed compliance publication, as well as customs rulings issued since 1989, are available to the public for downloading from the CBP Web site at *http://www.customs.gov.*

III. Technical Committee on Customs Valuation: Commentary 22.1, Meaning of the Expression ''Sold for Export to the Country of Importation'' in a Series of Sales

Article 18 of the Valuation Agreement established the Technical Committee on Customs Valuation (Technical Committee) ''with a view to ensuring, at the technical level, uniformity in interpretation and application of this Agreement''.[4] One of the responsibilities of the Technical Committee is to furnish information and advice on matters concerning the valuation of imported goods for customs purposes, as may be requested by any WTO Member or the Committee on Customs Valuation. The advice may take the form of advisory opinions, commentaries or explanatory notes (referred to collectively as instruments). At its 24th Session held at the WCO in April, 2007, the Technical Committee adopted Commentary 22.1, entitled *''Meaning of the Expression 'Sold for Exportation to the Country of Importation' in a Series of Sales.''*[5] The series of sales issue had been on the agenda of the Technical Committee for several sessions. Recognizing that this issue is important to the proper application of the transaction value method under Articles 1 and 8, and that different administrations have adopted different interpretations, the Technical Committee decided to study and clarify this issue.[6]

In Commentary 22.1, the Technical Committee states, ''[a] series of sales consists of two or more successive contracts for sales of goods. A basic issue in a series of sales is which sale should be used to determine the transaction value under Articles 1 and 8 of the Agreement. The purpose of this document is to clarify this issue.''

The Commentary includes an example illustrating a series of sales situation. In the example, A is a retail store located in the country of importation, B is a pen distributor located in country Z, and C is a pen manufacturer located in country X. A contracts with B for the purchase/sale of 1,000 pens of styles xx and yy. B contracts with C for the same amounts and styles of pens. C subsequently ships the pens directly to A. One of the questions posed was whether the price actually paid or payable for the imported goods when sold for export to the country of importation is the price A pays B in the last sale or the price B pays C in the first sale.

In the section of Commentary 22.1 entitled, *''Guidance derived from the provisions of the Agreement,''* the Technical Committee notes that the Agreement does not define or otherwise directly address the meaning of the expression ''sold for export to the country of importation.'' Therefore, the Technical Committee analyzes in great detail various provisions of the Agreement for guidance regarding the meaning of this phrase, including, for example, Article 8 relating to the adjustments that must be made to the price actually paid or payable in the determination of transaction value.

On the basis of this analysis, and in consideration of the fact that different countries' administrations may find it difficult to verify relevant information including accounting records that relate to the first sale, the Technical Committee reached the following conclusions:

> The Technical Committee is of the view that the underlying assumption of Article 1 is that normally the buyer would be located in the country of importation and that the price actually paid or payable would be based on the price paid by this buyer. The Technical Committee concludes that in a series of sales situation, the price actually paid or payable for the imported goods when sold for export to the country of importation is the price paid in the *last sale* occurring prior to the introduction of the goods into the country of importation, instead of the first (or earlier) sale. This is consistent with the purpose and overall text of the Agreement. [Emphasis added]
>
> In the example, consistent with the conclusion, the sale between A and B represents such a sale. Therefore, the price actually paid or payable for the imported goods when sold for export to Country I is 10,000 c.u. (the price A pays B in the last sale).

In view of the fact that CBP's current interpretation of the expression ''sold for exportation to the United States'' for purposes of applying the transaction value method of valuation in a series of sales situation is contrary to the considered views of the Technical Committee, as reflected in Commentary 22.1, CBP has undertaken a thorough examination of this series of sales issue under the U.S. value law. Based on this examination, CBP has concluded that the current interpretation as set forth in T.D. 96–87 and in CBP ruling letters is not correct. The reasons for this conclusion are discussed below. CBP is proposing a new interpretation to address how transaction value will be determined in a series of sales situation that is consistent with the conclusions of the Technical Committee in Commentary 22.1.

CBP further notes its understanding that most WTO Members already apply the interpretation set forth in Commentary 22.1. Therefore, adoption of the proposed interpretation would conform the U.S. interpretation regarding the application of transaction value in a series of sales to the current interpretation of most other WTO Members.

Discussion of Proposed Interpretation

I. Transaction Value—Statutory Language

Transaction value is derived from the price the buyer actually paid the seller for the imported merchandise. In this regard, the current statute directs that ''the transaction value of *imported merchandise* is the price actually paid or payable for the merchandise when sold for exportation to the United States.'' [Emphasis added] *See* 19 U.S.C. 1401a(b)(1) and 19 CFR 152.103(b). The term ''price actually paid or payable'' means the total payment made, or to be made, for imported merchandise by the buyer to, or for the benefit of, the seller. *See* 19 U.S.C. 1401a(b)(4)(A) and 19 CFR 152.102(f). In determining transaction value, various costs must be added to the price actually paid or payable, to the extent they are not already included. *See* 19 U.S.C. 1401a(b)(1)(A)–(E).[7] These additions form an integral part of transaction value. If sufficient information is not available with respect to any of the specified amounts, the transaction value of the imported merchandise concerned will be treated, for purposes of this section, as one that cannot be determined. *See* 19 U.S.C. 1401a(b)(1). The statute also specifies certain limitations on the use of transaction value. For example, a related party transaction value is acceptable if it ''closely approximates * * * the transaction value of identical merchandise, or of similar merchandise, in sales to unrelated *buyers in the United States* * * *.'' [Emphasis added] *See* 19 U.S.C. 1401a(b)(2)(B)(i).[8]

[4] Article 18 established the Technical Committee under the auspices of the Customs Cooperation Council, now known as the World Customs Organization (WCO). The WCO publishes the instruments of the Technical Committee in the Customs Valuation Compendium. Article 18 also established the Committee on Customs Valuation.

[5] Commentary 22.1 was published in July, 2007, as part of Amending Supplement 6, WCO Customs Valuation Compendium. A copy is included as ''Attachment A'' to this document.

[6] The Technical Committee asked Members to provide information about how each Administration addressed the series of sales issue. In response, the U.S. Administration submitted a copy of T.D. 96–87.

[7] These additions are listed in footnote 11 of this document.

[8] The various methods of establishing that a related party transaction value is acceptable are specified in 19 U.S.C. 1401a(b)(2)(B).

II. Transaction Value—Legislative History

Prior to the enactment of the TAA, imported merchandise was appraised, in general, on its export value.[9] Verification of facts in the country of export was frequently required to determine export value. The legislative history of the TAA makes it clear that Congress intended to replace the complicated ''export value'' system requiring investigations into the pricing practices in a foreign country with one in which the requisite information was easily obtainable and the determination of the appraised value was predictable and straightforward. *See* S. Rep. No. 96–249 and H. Rep. No. 96–317 to accompany H.R. 4537, 96th Cong. 1st Sess. (1979).

> The methods of valuation * * * represent a simplification of U.S. law and add significantly more predictability regarding the value which will be used for customs purposes. The use of transaction value as the primary basis for customs valuation will allow use of the price which the buyer and seller agreed to in their transaction as the basis for valuation, rather than having to resort to the more difficult concepts of ''freely offered,'' ''ordinary course of trade,'' ''principal markets of the country of exportation,'' and ''usual wholesale quantities'' contained in existing U.S. law.
>
> S. Rep. No. 96–249, at 119.
>
> An attempt has been made to ensure that these new rules are fair and simple, conform to commercial reality, and allow traders to predict, with a reasonable degree of accuracy, the duty that will be assessed to their products.
>
> *H. Rep. No. 96–317, at 79.*

The Court of Appeals for the Federal Circuit (CAFC) quoted the Senate Report language with approval in *Generra Sportswear Co.* v. *United States,* 905 F.2d 377, 380 (Fed. Cir. 1990). In *Generra,* the CAFC also indicated that the transaction value statute was enacted in order to provide a ''straightforward approach'' to valuation that would not require Customs to engage in ''formidable fact-finding.'' *See also VWP of America* v. *Untied States,* 175 F.3d 1327 (Fed. Cir. 1999).

In *Salant* v. *United States,* 86 F. Supp. 2d 1301 (C.I.T. 2000), a case involving the interpretation of the assist provision (assists are one of the additions to the price actually paid or payable), the Court of International Trade (CIT) indicated that the legislative history of the U.S. value law includes an examination of the GATT Valuation Code (Valuation Agreement) noting that 19 U.S.C. 1401a implemented the Agreement in the U.S. law.

It is therefore appropriate to examine the analysis of this issue by the Technical Committee. To that end, it is noted that the Technical Committee stated in Commentary 22.1:

> Article 1 does not refer to import transactions involving a series of sales and consequently does not provide criteria in that respect. Therefore, guidance must be sought from the purpose and the overall text of the Agreement, including an examination of its provisions. In addition, certain practical considerations are relevant.

Accordingly, the Technical Committee undertook a detailed examination of the Agreement. This examination included the General Introductory Commentary, the text, and interpretative notes to Articles 1, 6, 7, 8, and 9. The Technical Committee concluded that ''there are various indications in the General Introductory Commentary, Article 1 and other provisions of the Agreement that it was envisaged that Article 1 would normally be based on sales to buyers in the country of importation.''[10] Two of these indications, Article 8 regarding adjustments and Article 7 regarding the fallback method, are discussed below.

In paragraphs 14–20, Commentary 22.1, the Technical Committee analyzes the adjustments that must be made to the price actually paid or payable pursuant to Article 8. The Technical Committee observes that the determination of the proper sale upon which transaction value is based under Article 1 (*i.e.*, the first or last sale) directly affects what adjustments can be made under Article 8. Article 8 requires the addition of specified costs, including certain commissions *incurred by the buyer,* certain goods and services (referred to as assists under U.S. law) *supplied by the buyer,* certain royalties and license fees *paid by the buyer* and certain proceeds that *accrue to the seller.* Because these costs must be *incurred by the buyer, supplied by the buyer, paid by the buyer* or must *accrue to the seller,* the Technical Committee observes that ''in many cases it would not be possible to make the Article 8 adjustments if transaction value was determined based on (the price actually paid or payable by the buyer in) the first sale'', a result that was not intended. Based on the provisions of Article 1, Article 8, and the General Introductory Commentary, the Technical Committee states that ''the Article 8 adjustments are intended to fully reflect the substance of the entire transaction'' and that ''it is essential to apply transaction value in a series of sales situation in a manner that takes into account the substance of the entire commercial import transaction and permits the proper application of Article 8.'' The Technical Committee concludes that this occurs when transaction value is based on the last sale rather than the first sale:

> . . . [F]or example, under Article 8.1(a) and (c), selling commissions or royalties and license fees, are only to be included in the Customs value where they are incurred or paid *by the buyer.* Similarly, under Article 8.1(b), *the buyer* must supply the assist. In a series of sales, a buyer who is located in the country of importation would rarely be the buyer in the first sale. (Paragraph 17)
>
> Moreover, in a series of sales, the buyer in the first sale is not necessarily the party who pays the royalties or provides the assists. Therefore, the application of the first sale may preclude the addition of certain selling commissions, royalties and assists that otherwise would be included in the transaction value. Similarly, under Article 8.1(d), only proceeds that accrue directly or indirectly *to the seller* may be added to the price actually paid or payable. Proceeds paid by the buyer in the country of importation would not necessarily revert to the seller in the first sale. (Paragraph 18)
>
> In sum, a transaction value based on the first sale may not fully reflect the substance of the inputs resulting from, or forming part of the entire commercial chain as envisioned by the General Introductory Commentary, and Articles 1 and 8. In contrast, a transaction value based on the last sale will more fully reflect the substance of the entire transaction as envisioned. (Paragraph 21)

As indicated above, Article 8 is implemented in U.S. law in 19 U.S.C. 1401a(b)(1)(A)–(E). These provisions are substantively the same as Article 8 and include these same references to costs incurred by or paid by the buyer or proceeds that accrue *to the seller.*[11]

[9] Export value was defined as the ''price, *at the time of exportation* to the United States * * * at which such or similar merchandise is *freely sold or,* in the absence of sales, *offered for sale in the principal markets of the country of exportation,* in the usual wholesale quantities and in the ordinary course of trade, for exportation to the United States.'' [Emphasis added] 19 U.S.C. 1401a(b) (1976) and 19 U.S.C. 1402(d) (1976). The ''export value'' statute required an appraisement based on sales in the country of exportation at the time of the exportation, *i.e.*, the value of ''exported merchandise.''

[10] These are addressed in detail in Commentary 22.1. *See* ''Attachment'' to this document

[11] The additions under 19 U.S.C. 1401a(b)(1) include:

(A) The packing costs *incurred by the buyer* with respect to the imported merchandise;

(B) Any selling commission *incurred by the buyer* with respect to the imported merchandise;

(C) The value, apportioned as appropriate, of any assist; (An assist is defined as specified items if *supplied* directly or indirectly, and free of charge or at reduced cost, *by the buyer* of imported merchandise for use in connection with the production or the sale for export to the United States of the merchandise)

(D) Any royalty or license fee related to the imported merchandise that *the buyer* is required to pay, directly or indirectly, as a condition of the sale of the imported merchandise for exportation to the Untied States; and

Continued

Therefore, the above considerations would also apply to the U.S. law. This means that the series of sales issue has a direct impact on the additions that can be made under 19 U.S.C. 1401a(b)(1)(A)–(E). In fact, CBP has encountered many situations where certain royalties, selling commissions or other required statutory additions could not be included in the transaction value due to the application of the first sale principle.

After analyzing various provisions of the Valuation Agreement that directly relate to the determination of transaction value under Article 1 (*i.e.*, the General Introductory Commentary, Article 1, Article 8, and the Note to Article 8), Commentary 22.1 refers to other provisions of the Valuation Agreement for further guidance (*i.e.*, Articles 6, 7 and 9). For example, in paragraph 23, the Technical Committee refers to the text of Article 7 (commonly referred to as ''the fallback method'') and finds indications therein that Article 1 was intended to be determined on the basis of the last sale, instead of the first (or earlier) sale. The fallback method is used when transaction value (Article 1) and the other methods of valuation (Articles 2–6) cannot be applied to determine the value. Paragraph 23 states:

> As provided in paragraph 2 of the Note to Article 7, the methods of valuation to be employed under Article 7 should be those laid down in Articles 1 through 6 but with a reasonable flexibility. However, Article 7 indicates that this flexibility does not extend to allow the use of certain prices, including ''the price of goods on the domestic market of the country of exportation'' (*see* Article 7.2). This gives a clear indication of the intended scope of Article 1, namely that a sale that is prohibited under a flexible application of Article 1 cannot possibly be considered as valid under the normal application of Article 1. In a series of sales situation, the first sale often involves a sale between a producer and a local distributor in the same country. Clearly, these sales cannot be used to determine the Customs value under Article 7. It follows that such sales should also not be used to determine the value under Article 1.

The provisions of Article 7, including its prohibitions, are implemented in U.S. law in 19 U.S.C. 1401a(f).[12] CBP is of the view that these same observations can be made on the basis of 19 U.S.C. 1401a(f). CBP has also observed many instances where the first sale is between a manufacturer and distributor each located in the country of exportation (*e.g., see E.C. McAfee Co.* v. *United States,* 842 F.2d 314 (Fed. Cir. 1988), discussed below). The fact that Congress expressly prohibited the use of these sale prices under the fallback method (which permits a flexible application of the other statutory methods) provides a good indication that Congress assumed that these sale prices would not be used to determine transaction value. This anomaly does not arise when transaction value is determined on the basis of the last sale.

Based on its examination of all the provisions of the Valuation Agreement, and the Agreement's underlying purpose, the Technical Committee stated that it is of the view that the underlying assumption of Article 1 is that normally the buyer would be located in the country of importation and that the price actually paid or payable would be based on the price paid by this buyer. The Technical Committee therefore concluded that in a series of sales situation the price actually paid or payable is the price paid in the last sale occurring prior to the introduction of the goods into the country of importation, rather than the first, or earlier, sale.

Although Congress also did not explicitly address the series of sales issue in the U.S. value law, based on an examination of all the provisions of 19 U.S.C. 1401a and the legislative history, CBP is of the view that the underlying assumption of transaction value was that normally the buyer would be located in the United States and that the price actually paid or payable would be based on the price paid by this buyer. In light of the concerns expressed about export value (*i.e.*, that it was a complex valuation system that required foreign inquiries in order to determine the value), CBP is of the view that had Congress intended that under the transaction value statute the price actually paid or payable ought to be the price paid by a buyer in the first sale (usually a buyer located outside the U.S.) or that the required additions ought to be based on the costs incurred by that buyer in the first sale, it would have so provided. CBP also maintains that if Congress had intended that transaction value would be determined on the basis of a domestic sale in the country of exportation, it would not have included this prohibition under a flexible application of transaction value under the fallback method.

CBP is of the view that basing transaction value on the last sale occurring prior to the introduction of the goods into the United States reflects the proper construction of the statute and carries out the legislative intent of the TAA. In addition, it establishes a straightforward rule for determining transaction value in a series of sales situation that does not require CBP to engage in formidable fact-finding or to conduct foreign inquiries. This new approach will enable traders to predict with a reasonable degree of accuracy the customs value based on information readily available in the U.S. In addition, this proposal is consistent with the provisions and purpose of the Valuation Agreement, as clarified by the Technical Committee.

III. Court Decisions on Series of Sales Issue

A. Early court decisions and the invocation of the export value statute.

Two early court cases that considered the series of sales issue under the transaction value statute were *E.C. McAfee Co.* v. *United States,* 842 F.2d 314 (Fed. Cir. 1988) and *Nissho Iwai American Corp.* v. *United States,* 982 F.2d 505 (Fed. Cir. 1992).

E.C. McAfee Co. v. *United States* involved the importation of made-to-measure suits. The U.S. purchaser ordered the suits from a Hong Kong distributor who then contracted with a tailor in Hong Kong to assemble the clothing. After receiving the completed clothing from the tailor, the Hong Kong distributor delivered the clothing to the freight forwarder for transport to the United States and the purchaser in the U.S. The issue presented was whether transaction value should be determined on the basis of the price the U.S. purchaser paid to the distributor or the lower price the distributor paid to the Hong Kong tailor who assembled the clothing.

Although the transaction value statute applied to the importations at issue in *McAfee*, the CAFC concluded that it was necessary to follow the judicial precedents decided under the prior export value statute. The court adopted Customs' reasoning that the export value decisions were applicable to the issue presented because the phrase ''for exportation to the United States'' in the old export value statute ''is not significantly different from the quoted provision of the current statute.''

(E) The proceeds of any subsequent resale, disposal, or use of the imported merchandise that *accrue*, directly or indirectly, *to the seller.* [Emphasis added]

[12] 19 U.S.C. 1401a(f)(1) states: If the value of imported merchandise cannot be determined, or otherwise used for the purposes of this Act, under subsections (b) through (e), the merchandise shall be appraised for the purposes of this Act on the basis of a value that is derived from the methods set forth in such subsections, with such methods being reasonably adjusted to the extent necessary to arrive at a value. 19 U.S.C. 1401a(f)(2)(C) states: Imported merchandise may not be appraised, for the purposes of this Act, on the basis of the price of merchandise in the domestic market of the country of exportation.

McAfee 842 F.2d 314, 318.[13] The *McAfee* Court reasoned:

> The cited [export value] cases assume, without explanation, that if the importer establishes that his claimed, lower valuation falls within the statute, the importer is entitled to the benefit of that valuation even though Customs valuation also satisfies the same statutory requirements. While an argument could be made that Customs should have the option to impose the higher duty in such circumstances, the cited precedent is to the contrary. [Parenthetical added]
>
> *McAfee* at 318.[14]

The CAFC primarily relied on *United States* v. *Getz Bros. & Co,* 55 C.C.P.A 11 (1967) and other cases decided under the export value statute in finding that the price actually paid or payable must be based on the price the Hong Kong distributor paid to the Hong Kong tailor. It is noteworthy that *McAfee* did not take into account any of the new language in the transaction value statute or the legislative history of 19 U.S.C. 1401a.

The CAFC subsequently considered another series of sales situation in *Nissho Iwai American Corp.* v. *United States,* cited above, which involved imported subway cars. The issue presented was whether transaction value should be determined using the price the U.S. customer paid to the intermediary or the price the intermediary's parent company paid to the manufacturer. Relying on the analysis in *McAfee,* and the export value case law cited therein regarding the phrase ''for exportation to the United States,'' the CAFC determined that transaction value must be based on the ''first sale;'' that is, the sale between the intermediary and the manufacturer so long as that sale constitutes a viable transaction value.[15]

The court in *Nissho Iwai* utilized a two-prong test for determining whether the ''first-sale'' was a viable transaction value: The sale must be an arm's length sale and the goods must be clearly destined for export to the U.S. Based on the facts presented, the CAFC determined that these criteria were met and held that the custom-made subway cars at issue must be appraised based on the price the intermediary paid the manufacturer.

In *Synergy Sport International, Ltd.* v. *United States,* 17 C.I.T. 18 (1993), another transaction value case involving a series of sales that was decided shortly after *Nissho Iwai,* the CIT applied the reasoning in *Nissho Iwai* and concluded that the imported garments at issue should be appraised based on the price the intermediary paid to the manufacturer. The CIT stated that there was no allegation that the sale was not an arm's length sale and determined that the garments were clearly destined for export to the United States by virtue of the labels the manufacturer was required to place on the garments.[16]

Thus, the early court decisions that required transaction value to be determined on the basis of the price actually paid or payable in the first sale are based primarily on case law decided under the prior export value law and the similarity of some language from the export value law.

B. Recent Decisions Departing From the Statutory Analysis in Prior Court Cases on Series of Sales

More recently, the CAFC again had occasion to consider the relevance of certain court decisions decided under the prior export value law to the application of the transaction value statute. In *VWP of America, Inc.* v. *United States,* 175 F.3d 1327 (Fed. Cir. 1999), the CAFC held that the prior export value case law cannot properly account for the significant differences between the two statutes, citing *Generra,* which quoted from S. Rep. No. 96–249, as discussed above:

> In *Generra Sportswear Co.* v. *United States,* 905 F.2d 377, 380 (Fed. Cir. 1990), we referred to ''the critical difference'' between ''export value'' under pre-1979 law and ''transaction value'' under the present statute. In that context, we quoted with approval material from legislative history of the Trade Agreements Act: The use of transaction value as the primary basis for customs valuation will allow use of the price which the buyer and seller agreed to in their transaction as the basis for valuation, rather than having to resort to the more difficult concepts of ''freely offered,'' ''ordinary course of trade,'' ''principal markets of the country of exportation,'' and ''usual wholesale quantities'' contained in existing U.S. law.
>
> [a]s the Court of International Trade itself recognized, *Getz* and *Bjelland* were decided under the export value statute, which was repealed in 1979. In determining that transactions between [the parties] were not viable, the court applied incorrect standards, specifically, standards relevant under the now superseded export value statute. The correct standards are those set forth in the provisions of 19 U.S.C. 1401a discussed above.
>
> *VWP of America, Inc.* v. *United States* at 1334.

The substantial differences between export value and transaction value were also noted by the CIT in *Moss Manufacturing Co., Inc.* v. *United States,* 714 F. Supp. 1223 (C.I.T. 1989), *aff'd,* 896 F.2d 535 (Fed. Cir. 1990).

In light of the decisions in *VWP* and *Moss,* CBP is of the view that notwithstanding the fact that the export value and transaction value statutes each contain the phrase ''for exportation to the United States,'' the two statutes are substantially different. Therefore, the analysis of the series of sales issue under the transaction value statute should be based on a full analysis of the provisions of 19 U.S.C. 1401a and its legislative history, rather than on the only common wording found in both statutes and the cases decided under the export value statute.

IV. Difficulties in Administering the First Sale Principle in a Series of Sales

The application of the first-sale principle for transaction value in a series of sales requires considerable review of the specific facts and documentation presented. For example, determining whether fungible goods are clearly destined to the U.S. when they are sold to the intermediary is never clear-cut, especially when the merchandise is shipped to a foreign

[13] The merchandise at issue in *McAfee* was addressed by CBP (formerly the U.S. Customs Service) in TAA #10/065056, entitled ''*Export Value: Dutiability of Sales from Manufacturers to Distributors*'' Customs Service Decision 81–72, 15 Cust. B. & Dec. 876, Oct. 17, 1980. In this ruling, CBP concluded that case law decided under the export value statute was also applicable to the interpretation of the transaction value statute, noting that both statutes include the language ''for exportation to the United States.'' CBP is now of the view that this conclusion was erroneous because CBP relied on the only phrase common to both statutes and did not take into account the remainder of the new statutory text that reflects the significant analytical change that Congress intended. (TAA #10 was subsequently revoked by an unpublished ruling, TAA #40/542643, October 19, 1981 due to discrepancies in the facts presented).

[14] CBP issued a general notice indicating that the holding of *McAfee* is limited by the language of the court to the facts of that particular case. According to the notice, the principles set forth within the court case should only be applied to the importation of made-to-measure clothing and only in situations where the distributor and tailor are located in the same country. *See* 22 Cust. B. & Dec. No. 18, 7–8 (May 4, 1988).

[15] In *Nissho Iwai,* the imported merchandise consisted of subway cars custom manufactured for the New York City Metropolitan Transit Authority (MTA). The MTA contracted with Nissho Iwai American Corporation (NIAC) for subway cars made according to its specifications. NIAC assigned its contract rights to its Japanese corporate parent, Nissho Iwai Corporation (NIC), and NIC contracted with the manufacturer, Kawasaki Heavy Industries (Kawasaki), for the subway cars. Kawasaki was directly involved in the negotiations and sale between MTA and NIAC and was named as the manufacturer in the MTA–NIAC contract. The custom-made subway cars manufactured by Kawasaki were imported by NIAC.

[16] That case involved garments imported by Synergy, a Hong Kong company with offices in the United States. Synergy sold the garments to J.C. Penney in the U.S. After J.C. Penney placed its order with Synergy, Synergy placed an order with Chinatex, the Chinese manufacturer. The issue presented was whether the garments should be appraised based on the price J.C. Penney paid to Synergy or on the price Synergy paid to Chinatex.

intermediary prior to the importation into the U.S. For example, the intermediary often sells the same merchandise both to buyers in the U.S. and to buyers in other countries but the claim is made that the inventory records and other evidence establish that the imported merchandise was clearly destined to the U.S. In these cases, CBP must review the inventory records and other evidence in order to evaluate the claim. In other cases, importers claim that the submitted paper trail relating to all the various sales in the series of sales is sufficient to establish that the imported merchandise was destined for a particular U.S. customer. Determining whether the merchandise was clearly destined to the U.S. customer requires a review of all of these documents and extensive fact-finding.

Considerable fact-finding is also necessary to determine whether a particular first sale transaction is a *bona fide* arm's length sale, especially when some or all of the parties involved in the series of sales are related parties or when the series of sales involves more than two sales and when additional parties, such as buying and/or selling agents, are involved in the series of sales transactions. In these cases, before a determination can be made that the first sale represents transaction value, it is necessary to examine the roles of the various parties and whether the claimed first sale is a *bona fide* arm's length sale. If the buyer and seller are related, CBP has to consider whether the relationship between the parties has affected the price. Assuming that a determination has been made that the first sale is an arm's length sale and that the goods are clearly destined to the U.S., additional fact-finding is necessary to determine whether all the statutory additions have been properly reflected.

The first sale principle also presents post-entry audit verification issues. This is due to the fact that the first sale usually involves a foreign sale and CBP does not have easy access to the records, including accounting records, which may be needed for verification purposes. CBP lacks direct access to the books and records relevant to the first sale transaction.[17]

The first-sale principle for determining transaction value also makes it difficult for an importer to meet its obligations under 19 U.S.C. 1484 to use reasonable care to properly declare the value of imported merchandise.[18] The importer's burden increases greatly when an importer declares a transaction value based on the first sale, a sale for which the importer may not have access to all the transaction documents and the surrounding details. In addition, without knowledge of all the particulars surrounding that sale, it is difficult for the importer to attest to the truthfulness of the value declaration as required by 19 U.S.C. 1485(a). For example, it may be impossible to know whether all the applicable statutory additions have been fully and accurately reported.

The proposed interpretation in this document addresses the above concerns by establishing a transparent standard for determining transaction value that is easily applied and based on information available in the United States. Under the proposal, transaction value is based on the price paid in the last sale occurring prior to the introduction of the goods into the United States, instead of the first (or earlier) sale. This will generally be the price paid by the buyer in the United States. CBP will be better able to verify the accuracy of the declared value when transaction value is based on the last sale. As a result, both CBP and importers will be better able to meet their shared responsibilities with respect to proper customs valuation.

V. Relevance of Technical Committee Commentary 22.1, Meaning of the Expression "Sold for Export to the Country of Importation" in a Series of Sales to Interpretation of U.S. Value Statute (19 U.S.C. 1401a)

The courts have previously considered the relevance of the Valuation Agreement as interpreted by the Committee on Customs Valuation to the proper interpretation of 19 U.S.C. 1401a.

Recognizing that 19 U.S.C. 1401a was promulgated specifically to implement the provisions of the Valuation Agreement, both the CAFC and the CIT have noted the importance of interpreting 19 U.S.C. 1401a in a manner consistent with GATT obligations. *See Luigi Bormioli Corp., Inc.* v. *United States,* 304 F.3d 1362 (Fed. Cir. 2002) and *Caterpillar Inc.* v. *United States,* 20 C.I.T. 1169, 941 F. Supp 1241 (CIT 1996). For this same reason, the CIT determined in *Salant,* cited above, that the legislative history of 19 U.S.C. 1401a includes an examination of the Valuation Agreement.

In the *Luigi Bormioli* case, the CAFC relied on a decision by the Committee on Customs Valuation regarding the proper interpretation of transaction value under Article 1 of the Valuation Agreement and under 19 U.S.C. 1401a. In that case, the CAFC considered the validity of T.D. 85–111, which concerned the treatment of interest payments under the transaction value statute. In T.D. 85–111, CBP determined that interest payments are not included in transaction value when the conditions specified therein are satisfied. This decision was issued in order to implement Decision 3.1 of the Committee on Customs Valuation, entitled *"Treatment of Interest Charges in the Customs Value of Imported Goods."* The court in *Luigi Bormioli* noted that in the background to the document CBP stated, "the 1994 GATT Committee Decision had prompted Customs to reassess its previous position." In upholding T.D. 85–11, the CAFC emphasized the fact that it incorporated the conclusions of the Committee on Customs Valuation in Decision 3.1 regarding the treatment of interest under the Valuation Agreement. It also noted that the Committee decision established a uniform and logical policy regarding the treatment of interest payments and the documentation required, and that such policy was consistent with the U.S. law and with the policy of the U.S. law. In its analysis, the *Luigi Bormioli* Court stated:

> We must first consider whether T.D. 85–111 is consistent with the statute. Although all the detailed criteria of T.D. 85–111 cannot be found in the explicit language of the statute, we think that the statute must be interpreted to be consistent with GATT obligations, absent contrary indications in the statutory language or its legislative history. See *Fed. Mogul Corp.* v. *United States,* 63 F.3d 1572, 1581 (Fed. Cir. 1990) ("Absent express Congressional language to the contrary, statutes should not be interpreted to conflict with international obligations."). Here there are no such contrary indications. The GATT approach is quite consistent with the statute. Like 19 U.S.C. 1401a(b)(4)(A), the GATT broadly

[17] On December 8, 1993, Title VI (Customs Modernization of "Mod Act"), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), went into effect. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Under the provisions of the Mod Act and 19 CFR part 163, certain persons are required to maintain specified records pertaining to the import transaction for examination and inspection by CBP (*i.e.*, an owner, importer, consignee, importer of record, and entry filer and other specified persons). Under these provisions, CBP may initiate an investigation or compliance assessment, audit or other inquiry for the purpose of ascertaining the correctness of the entry and insuring compliance with the customs laws. When transaction value is based on the last sale, it is likely that at least one of the parties to that sale would be subject to the recordkeeping requirements and the pertinent information relating to the sale is easily verified by CBP. This is often not the case when transaction value is determined based on the first sale.

[18] Section 484, as amended by the Customs Modernization Act, requires importers to use reasonable care to correctly value and classify entered merchandise. *See* 19 U.S.C. 1484.

defines ''price actually paid or payable.'' See 1994 GATT Interpretive Note. GATT is also consistent with the policy of the statute. The GATT parameters not only provide a uniform method to evaluate when 'interest' charges are included in transaction value, but they also serve to prevent importers from manipulating the amount of duties assessed on particular merchandise by simply designating part of the payment made for that merchandise as ''interest.'' Without a policy that requires both sufficient documentation of the transaction, and evidence of comparable prevailing rates and sales, an importer could easily reduce the ''price actually paid or payable'' of the goods by denominating charges that actually represented a portion of the price of the goods as ''interest.'' *Thus, we construe the statute to make it consistent with GATT.*

Under that construction, T.D. 85–111 is consistent with the statute because it is the same as GATT. In all relevant respects T.D. 85–111 and the 1984 GATT Committee decision set forth the same criteria * * * [Emphasis added]

Luigi Bormioli at 1369.

CBP is of the view that this decision strongly supports an interpretation of 19 U.S.C. 1401a that is consistent with the Valuation Agreement as clarified by the Technical Committee in Commentary 22.1. There are no contrary indications in the statutory language of 19 U.S.C. 1401a or its legislative history. In fact, CBP notes that most of the provisions in 19 U.S.C. 1401a mirror the provisions of the Valuation Agreement. Moreover, the relevant definitions of transaction value and price actually paid or payable and the provisions regarding the additions to be made to the price actually paid or payable under the Valuation Agreement and the U.S. value law are substantively identical. Similar to the circumstances considered in the CAFC's analysis and holding in *Luigi Bormioli,* CBP has reassessed its current position regarding the determination of transaction value in light of a decision issued by a Committee established under Article 18 of the Valuation Agreement and is proposing to adopt that Committee's conclusions. Most important, Commentary 22.1 clarifies the series of sales issue and provides a uniform method for determining transaction value in a series of sales in a manner that CBP believes is consistent with the text and legislative history of the U.S. value law.

Conclusions

I. Proposal for Adoption of Commentary 22.1

For the reasons discussed in this document, CBP proposes to change its current position with regard to the determination of transaction value in a series of sales context and to adopt the conclusions in Commentary 22.1. Specifically, CBP is proposing that in a series of sales situation, the price actually paid or payable for the imported goods when sold for exportation to the United States is the price paid in the last sale occurring prior to the introduction of the goods into the United States, instead of the first (or earlier) sale. The result will be that transaction value is normally determined on the basis of the price paid by the buyer in the United States.

If this proposed interpretation is adopted, it will result in the revocation of T.D. 96–87, the modification or revocation of administrative rulings that have analyzed the series of sales issue using the first-sale criteria, and the revocation of any treatment previously accorded by CBP to substantially identical transactions. In addition, the application of *McAfee, Nissho Iwai* and *Synergy* would be limited to the specific entries at issue in those cases.

II. Application of Proposed Interpretation to U.S. Value Law

In order to facilitate a greater understanding of how the proposed interpretation set forth in this document would apply to U.S. value law, it is useful to examine the proposed interpretation in the context of a series of sales example.

The example, set forth in paragraphs 4–9 of Commentary 22.1 (attached), reflects a common fact pattern addressed in numerous first-sale rulings issued by CBP; namely, the buyer in the country of importation (*i.e.*, the U.S.) begins the series of sales by agreeing to purchase certain items (in this case, pens) according to its specifications from a foreign distributor. The foreign distributor then orders these items from an unrelated manufacturer according to the buyer's specifications and the merchandise is shipped directly from the manufacturer to the buyer in the U.S. The example also presents an issue that often arises in first-sale rulings; namely, whether one or more additions to the price actually paid or payable apply. In the example, the buyer in the country of importation is required to pay certain proceeds of a subsequent resale to the distributor. The issue is whether these proceeds accrue, directly or indirectly, to the seller as provided in 19 U.S.C. 1401a(b)(1)(E).

Based on the facts presented in Commentary 22.1 and the various assumptions made (*e.g.*, all the relevant documentation pertaining to both sales can be produced), the pens in the example would currently qualify for appraisement based on the first sale between the distributor and the manufacturer if they were imported into the U.S. Based on the facts presented, the first sale is an arm's length sale and the pens were always clearly destined to the United States. Under this interpretation, the proceeds of the subsequent resale from the buyer in the U.S. to the distributor could not be included in the transaction value absent evidence that such proceeds accrued directly or indirectly to the seller in the first sale (*i.e.*, the manufacturer).

Under the proposed interpretation, the sale between the buyer in the U.S. and the distributor is the last sale prior to the introduction of the pens into the United States. Therefore, transaction value would be determined based on the price paid by the buyer in the U.S. to the distributor in this last sale. The proceeds of the subsequent resale paid by this buyer accrue directly to the seller in this last sale (*i.e.*, the distributor). Therefore, under the proposed interpretation, these proceeds would be added to the price actually paid or payable pursuant to 19 U.S.C. 1401a(b)(1)(E). Basing transaction value on the sale from the buyer in the U.S. to the foreign distributor is consistent with the statement in Commentary 22.1 that the underlying assumption of Article 1 (transaction value) is that normally the buyer would be located in the country of importation and that the price actually paid or payable would be based on the price paid by this buyer. Basing transaction value on this sale also allows for the inclusion of the applicable additions to the price actually paid or payable, in this case, the proceeds of the subsequent resale.

Solicitation of Comments

CBP will consider written comments timely submitted in accordance with the instructions set forth in the **ADDRESSES** section of this document in its review of the proposed interpretation of the term ''sold for exportation to the United States'' for purposes of applying the transaction value method of valuation in a series of sales importation scenario. Before making this proposed interpretation final, consideration will be given to any written comments timely received on this matter.

Dated: January 17, 2008.

W. Ralph Basham,

Commissioner, U.S. Customs and Border Protection.

Attachment—Meaning of the Expression ''Sold for Export to the Country of Importation'' in a Series of Sales

1. Introduction

1. A series of sales consists of two or more successive contracts for sales of

goods. A basic issue in a series of sales is which sale should be used to determine the transaction value under Articles 1 and 8 of the Agreement. Advisory Opinion 14.1—Meaning of the expression ''sold for export to the country of importation''—does not clarify the meaning of this phrase as applied to a series of sales situation. The purpose of this document is to clarify this issue.

2. As provided in the General Introductory Commentary of the Agreement, the primary basis for Customs value is transaction value. Transaction value is defined in Article 1 as ''the price actually paid or payable for the goods when sold for export to the country of importation adjusted in accordance with the provisions of Article 8''. Price actually paid or payable is defined in the Note to Article 1 as ''the total payment made or to be made by the buyer to or for the benefit of the seller for the imported goods''.

3. In a series of sales, it is necessary to establish which of the sales should be taken into account in order to identify the price actually paid or payable for the goods when sold for export to the country of importation. Any series of sales will include a last sale occurring in the commercial chain prior to the introduction of the goods into the country of importation (the last sale) and a first (or earlier) sale in the commercial chain.[1] In the example below, there are two successive contracts for sales of the imported goods, one between importer A and distributor B (the last sale) and another between distributor B and manufacturer C (the first sale).

2. Example Illustrating a Series of Sales Situation

4. A is a retail store located in the country of importation I, B is a pen distributor located in country Z, and C is a pen manufacturer located in country X. There is no relationship between A, B, or C within the meaning of Article 15.4.

5. On July 10, 2004, retailer A contracts with distributor B for the purchase/sale of certain pens. Pursuant to the A–B sales contract:

- A agrees to purchase 1,000 pens from B for 10,000 currency units (c.u.);
- B will provide A with 400 pens of style xx and 600 pens of style yy;
- Each pen will display A's name and address;
- B can obtain the pens from any pen manufacturer in country X;
- The pens will be shipped directly from the manufacturer to A;
- Title will pass from B to A when the pens are boarded on the ship in country X;
- Payment is due within 30 days of shipment;
- A agrees to pay B 20% of the resale price for each pen A sells prior to October 1, 2004.

6. On July 12, 2004, B contracts with manufacturer C for the purchase/sale of certain pens. Pursuant to the B–C sales contract:

- B agrees to purchase 1,000 pens from C for 8,000 c.u.;
- C will provide B with 400 pens of style xx and 600 pens of style yy;
- Each pen will display A's name and address;
- C will ship the pens directly to A;
- Title passes from C to B when the pens leave C's factory;
- Payment is due within 30 days of shipment.

7. On August 10, 2004, C ships the pens to A. On August 20, the pens arrive in country I and A files a Customs entry. On September 1, A pays B 10,000 c.u. On September 5, B pays C 8,000 c.u. Prior to October 1, A sells 400 pens at 15 c.u. each. On October 5, A pays B 1,200 c.u. (20% of A's resale price for pens sold prior to October 1).

8. In this example, the last sale is the one between A and B and the first sale is the one between B and C.

3. Questions

9. Assuming transaction value is the appropriate basis for determining the Customs value of the imported pens, and that A is able to produce all the documentation pertaining to both the A–B and B–C sales (contracts, purchase orders, invoices, payment records):

(1) Is the price actually paid or payable for the imported goods when sold for export to country I 10,000 c.u. (the price A pays B in the last sale) or 8,000 c.u. (the price B pays C in the first sale)?

(2) Should the 1,200 c.u. payment from A to B be added to the price actually paid or payable as ''proceeds of a subsequent resale of the imported goods that accrues directly or indirectly to the seller'' pursuant to Article 8.1(d)?

4. Analysis

Guidance Derived From the Provisions of the Agreement

10. The Agreement does not define or otherwise directly address the meaning of the expression ''sold for export to the country of importation.'' However, it is easy to identify the sale for export to the country of importation that is used to determine transaction value under Article 1 when the import transaction involves only one sale. In that situation, there is only one buyer, usually located in the country of importation, and one seller, usually located in another country.

11. Article 1 does not refer to import transactions involving a series of sales and consequently does not provide criteria in that respect. Therefore, guidance must be sought from the purpose and the overall text of the Agreement, including an examination of its provisions. In addition, certain practical considerations are relevant.

12. As set forth below, there are various indications in the General Introductory Commentary, Article 1 and other provisions of the Agreement that it was envisaged that Article 1 would normally be based on sales to buyers in the country of importation.

13. There is explicit language in Article 1 that reflects the intended scope of Article 1. Pursuant to Article 1.1(a)(i), the Customs value of imported goods shall be the transaction value provided that there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which are imposed or required by law or by the public authorities in the country of importation. The emphasized text is a good indication that the underlying assumption of Article 1.1(a)(i) was that the buyer of the goods sold for export to the country of importation would normally be located in the country of importation.[2]

14. The intended scope of Article 1 is also reflected in the provisions regarding the adjustments to the price actually paid or payable. The General Introductory Commentary makes it clear that the proper determination of transaction value depends on the application of Article 1 in conjunction with Article 8. Paragraph 1 of the General Introductory Commentary provides that ''the primary basis for Customs value under the Agreement is 'transaction value' as defined in Article 1''. It further states that ''Article 1 is to be read together with Article 8, which provides, inter alia, for adjustments to the price actually paid or payable in cases where certain specific elements which are considered to form a part of the value for Customs purposes are incurred by the buyer but are not included in the price actually paid or payable for the imported goods.

15. Article 8 also provides for the inclusion in the transaction value of certain considerations which may pass

[1] In a series of sales, it is common to refer to the various sales as the last sale and the first (or earlier) sale whether or not these terms are consistent with the chronological order of the sales contracts.

[2] This assumption would not apply if there was no buyer in the country of importation.

from the buyer to the seller in the form of specified goods or services rather than in the form of money.'' [3] If the specified amounts are not already included in the price actually paid or payable, Article 8 requires their addition. In others words, the transaction value method is intended to take account of the substance of the entire commercial import transaction preceding import of the goods, including the economic inputs and related transactions which arise therefrom.

16. Therefore, as mandated by the General Introductory Commentary, it is essential to apply transaction value in a series of sales situation in a manner that takes into account the substance of the entire commercial import transaction and permits the proper application of Article 8.

17. In many cases, it would not be possible to make the Article 8 adjustments if transaction value was determined based on the first sale. For example, under Article 8.1(a) and (c), selling commissions or royalties and licence fees, are only to be included in the Customs value where they are incurred or paid by the buyer. Similarly, under Article 8.1(b), the buyer must supply the assist. In a series of sales, a buyer who is located in the country of importation would rarely be the buyer in the first sale.

18. Moreover, in a series of sales, the buyer in the first sale is not necessarily the party who pays the royalties or provides the assists. Therefore, the application of the first sale may preclude the addition of certain selling commissions, royalties and assists that otherwise would be included in the transaction value. Similarly, under Article 8.1(d), only proceeds that accrue directly or indirectly to the seller may be added to the price actually paid or payable. Proceeds paid by the buyer in the country of importation would not necessarily revert to the seller in the first sale.

19. The example is illustrative. If the transaction value is determined on the basis of the first sale between B and C, C is considered the seller of the imported goods and the proceeds of the subsequent resale from A to B would not be proceeds that accrue directly to the seller. In the absence of evidence that the proceeds accrued indirectly to the seller, such proceeds could not be added pursuant to Article 8.1(d). However, if the transaction value is determined on the basis of the last sale between A and B, B is considered the seller and the proceeds paid to B would fall squarely within the provisions of Article 8.1(d). Under the latter interpretation, the transaction value takes into account the substance of the entire commercial transaction. In contrast, application of the first sale results in a transaction value that does not fully reflect the substance of the entire transaction.

20. In sum, a transaction value based on the first sale may not fully reflect the substance of the inputs resulting from, or forming part of the entire commercial chain as envisioned by the General Introductory Commentary, and Articles 1 and 8. In contrast, a transaction value based on the last sale will more fully reflect the substance of the entire transaction as envisioned.

21. Certain provisions of the Agreement use the terms ''buyer'' and ''importer'' interchangeably. For example, while Article 8.1(a)(i) stipulates that buying commissions incurred by the buyer are not to be added to the price actually paid or payable, the Note to that Article defines the term ''buying commissions'' as ''fees paid by an importer to the importer's agent for the service of representing the importer abroad in the purchase of the goods being valued.'' Also, while Article 8.1(b) stipulates that the value of certain elements supplied by the buyer is to be added to the price actually paid or payable, paragraph 2 of the Note to Paragraph 1(b)(ii) of Article 8 explains the value of the element in relation to the importer. Furthermore, paragraph 4 of that Note provides an illustrative case where an importer is the buyer who supplies the producer with a mould to be used in the production of the imported goods.

22. The Note to Article 6 states that ''as a general rule, Customs value is determined under this Agreement on the basis of information readily available in the country of importation''. This concept is also reflected in Article 7: ''If the Customs value of the imported goods cannot be determined under the provisions of Articles 1 to 6, inclusive, the Customs value shall be determined using reasonable means consistent with the principles and general provisions of this Agreement * * * and on the basis of data available in the country of importation.'' With respect to the determination of transaction value under Article 1, it is the last sale, rather than the first sale, that will normally satisfy this general rule. As noted, the last sale normally involves a buyer located in the country of importation and information about this sale will usually be more readily available in the country of importation than information about the first sale.

23. As provided in paragraph 2 of the Note to Article 7, the methods of valuation to be employed under Article 7 should be those laid down in Articles 1 through 6 but with a reasonable flexibility. However, Article 7 indicates that this flexibility does not extend to allow the use of certain prices, including ''the price of goods on the domestic market of the country of exportation'' (see Article 7.2). This gives a clear indication of the intended scope of Article 1, namely that a sale that is prohibited under a flexible application of Article 1 cannot possibly be considered as valid under the normal application of Article 1. In a series of sales situation, the first sale often involves a sale between a producer and a local distributor in the same country. Clearly, these sales cannot be used to determine the Customs value under Article 7. It follows that such sales should also not be used to determine the value under Article 1.

24. There are also other indications in the Agreement that it was not envisaged that the determination of transaction value would diverge, depending on whether the import transaction involved a single sale or a series of sales. For example, in the General Introductory Commentary, the Members recognize the need for a uniform system of valuation. In a series of sales, determining transaction value based on the last sale addresses this need for uniformity. In a single sale situation, the price actually paid or payable will normally be represented by the price paid by the buyer in the country of importation. If, in a series of sales situation, transaction value is based on the last sale, the result will generally be the same; namely, a transaction value based on the price paid by the buyer in the country of importation. On the other hand, if transaction value is based on the first sale, then the price actually paid or payable will generally be represented by the price paid by a buyer outside the country of importation and the result is a different transaction value.

25. It should also be noted that the Agreement allows Members to apply different treatments in certain cases. In this regard, Article 8.2 specifies that in framing its legislation, each Member shall provide for the inclusion in or the exclusion from the Customs value of certain transportation costs. Article 9 specifies that the currency conversion rate to be used shall be that in effect at the time of exportation or the time of importation, as provided by each Member. Since Article 1 provides no

[3] These goods or services are often referred to as assists.

such choice, the logical conclusion is that the authors envisaged that the resulting transaction value would be the same whether the importation involves a single sale or a series of sales (i.e., transaction value would normally be determined based on the price paid by the buyer in the country of importation). Otherwise, they would have either specified how transaction value should be determined in a series of sales situation or provided an explicit choice to Members.

Practical Consideration

26. In practice, the Customs administration may face difficulties in verifying information, including accounting records, related to the first sale when such information is held by the foreign intermediary or seller. This could include, for example, information and accounting records pertaining to the total payment made by the foreign intermediary to the seller and the Article 8 adjustments. Such difficulties are alleviated when the last sale is applied.

5. Conclusion

27. The Technical Committee is of the view that the underlying assumption of Article 1 is that normally the buyer would be located in the country of importation and that the price actually paid or payable would be based on the price paid by this buyer. The Technical Committee concludes that in a series of sales situation, the price actually paid or payable for the imported goods when sold for export to the country of importation is the price paid in the last sale occurring prior to the introduction of the goods into the country of importation, instead of the first (or earlier) sale. This is consistent with the purpose and overall text of the Agreement.

28. In the example, consistent with the conclusion, the sale between A and B represents such a sale. Therefore, the price actually paid or payable for the imported goods when sold for export to country I is 10,000 c.u. (the price A pays B in the last sale).

29. Accordingly, the 1,200 c.u. payment from A to B represents proceeds of a subsequent resale of the imported goods that accrues directly or indirectly to the seller under Article 8.1(d) that must be added to the price actually paid or payable in determining transaction value.

Com. 22.1
Amending Supplement No. 6—July 2007

[FR Doc. E8–1140 Filed 1–23–08; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–956–07–1910–4482; Group No. 29, Illinois]

Eastern States: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plat of survey; Minnesota.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM-Eastern States, Springfield, Virginia, 30 calendar days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153. Attn: Cadastral Survey.

SUPPLEMENTARY INFORMATION: This survey was requested by the U.S. Army Corps of Engineers.

The lands we surveyed are:

Third Principal Meridian, Illinois

T. 3 N., R. 10 W.

The plat of survey represents the corrective survey of a portion of the Lock and Dam No. 27 Acquisition Boundary in Township 3 North, Range 10 West of the Third Principal Meridian, The State of Illinois, and was accepted December 27, 2007. This corrective survey placed Angle Points Nos. 70 and 71 in their correct positions.

We will place a copy of the plat we described in the open files. It will be available to the public as a matter of information.

If BLM receives a protest against this survey, as shown on the plat, prior to the date of the official filing, we will stay the filing pending our consideration of the protest.

We will not officially file the plat until the day after we have accepted or dismissed all protests and they have become final, including decisions on appeals.

Dated: January 16, 2008.

Joseph W. Beaudin,

Acting Chief Cadastral Surveyor.

[FR Doc. E8–1176 Filed 1–23–08; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–200–1120–DD–241A]

Notice of Public Meeting, Twin Falls District Resource Advisory Council Meeting, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA), the Federal Advisory Committee Act of 1972 (FACA), and the Federal Lands Recreation Enhancement Act of 2004 (FLREA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Twin Falls District Resource Advisory Council (RAC) will meet as indicated below.

DATES: February 21, 2008. The meeting will start at 8:30 a.m. and end no later than 4 p.m. The public comment period will be from 9:30 a.m. to 10 a.m. The meeting will be held at the Red Lion Canyon Springs Hotel, 1357 Blue Lakes Boulevard, Twin Falls, Idaho, 83301.

FOR FURTHER INFORMATION CONTACT: Heather Tiel-Nelson, Twin Falls District, Idaho, 2536 Kimberly Road, Twin Falls, Idaho 83301, (208) 736–2352.

SUPPLEMENTARY INFORMATION: The 15-member RAC advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Idaho. The agenda will include the following topics: welcome to new members, Field Office updates, energy projects discussion, Twin Falls District fire rehabilitation efforts and planning for upcoming tours for the RAC. Additional topics may be added and will be included in local media announcements. More information is available at *www.blm.gov/id/st/en/res/resource_advisory.3.html*.

All meetings are open to the public. The public may present written comments to the RAC in advance of or at the meeting. Each formal RAC meeting will also have time allocated for receiving public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the BLM as provided above.

Dated: January 15, 2008.

Bill Baker,

District Manager.

[FR Doc. E8–1134 Filed 1–23–08; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–922–08–1310–FI; COC65947]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement of oil and gas lease COC65947 from Laramie Energy, LLC for lands in Garfield County, Colorado. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Milada Krasilinec, Land Law Examiner, Branch of Fluid Minerals Adjudication, at 303.239.3767.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $163 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease COC65947 effective June 1, 2007, under the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Dated: January 16, 2008.

Milada Krasilinec,

Land Law Examiner.

[FR Doc. E8–1160 Filed 1–23–08; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–110–1430–EU 241A; DBG–08–1005]

Notice of Realty Action; Direct and Competitive Sales of Public Land, Idaho and Proposed Plan Amendment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action and Proposed Plan Amendment.

SUMMARY: Thirty-four parcels of public land in Ada, Adams, Canyon, Gem, Payette, Valley, and Washington Counties, Idaho are being proposed for direct and competitive sale under the provisions of the Federal Land Policy Management Act of 1976 (FLPMA), and the Federal Lands Transaction and Facilitation Act of 2000 (FLTFA) at no less than the appraised fair market value. Three parcels may be disposed of under the authority of the Recreation and Public Purposes Act of 1926, as amended (R&PP). Five of these parcels require amendment of the Cascade Resource Management Plan (RMP) prior to sale.

DATES: Comments on the proposed sales must be received by March 10, 2008. Protests on the proposed RMP amendment must be received or postmarked by February 25, 2008.

ADDRESSES: Comments regarding the proposed sales, as well as sealed bids, should be addressed to Rosemary Thomas, Four Rivers Field Manager, Bureau of Land Management, Boise District Office, 3948 Development Avenue, Boise, Idaho 83705, the location where the public auction will be held.

Protests to the proposed RMP amendment must be sent to the Director (760), Chief, Planning and Environmental Coordination, Bureau of Land Management, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Information regarding the competitive sale procedures, including the environmental assessment, appraisals, and maps can be obtained at the public reception desk at the BLM Boise District Office, from 8 a.m. to 4:30 p.m., Monday through Friday (except Federal holidays), or by contacting Effie Schultsmeier, Four Rivers Realty Specialist, at the above address or phone (208) 384–3357.

SUPPLEMENTARY INFORMATION: The following described public lands have been examined and found suitable for transfer out of Federal ownership by sale utilizing direct and competitive sale procedures under the authority of Section 203 and Section 209 of FLPMA (90 Stat. 2750, 43 U.S.C. 1713 and 1719), and/or the R&PP Act (43 U.S.C. 869, *et seq.*).

Parcel 1. These lands encompass the existing Clay Peak Motorcycle Park and will be offered to Payette County via direct sale or other authority.

T. 8 N., R. 5 W., Boise Meridian, Payette County, Idaho

Section 1: Lots 1, 2, 3, 4, S½NE¼, SW¼NW¼, S½.
Section 2: Lots 1 & 2, S½NE¼, NE¼SE¼, NE¼SE¼, and that portion (approx. 25 acres) of the NW¼SE¼ remaining in federal ownership.
Section 12: N½NE¼, SW¼NE¼, that portion of the NW¼ lying north and east of the Northeasterly right-of-way boundary of State Highway 52.

Aggregating approximately 948.04 acres, more or less.
Appraised value $1,422,000.

Parcel 2. These lands will be offered for direct sale to Canyon County to be used as a buffer zone around the Pickles Butte Sanitary Landfill, for expansion of an existing shooting range, and for additional dispersed and OHV recreation.

T. 2 N., R. 3 W., Boise Meridian, Canyon County, Idaho

Section 20: S½S½;
Section 21: NW¼NE¼, NE¼NW¼; E½SW¼NE¼, E½W½SE¼;
Section 28: N½, N½SE¼, SE¼SE¼;
Section 29: N½NE¼;

Aggregating approximately 820.00 acres, more or less.
Appraised value $4,100,000.

Parcel 3. This isolated parcel near the City of Star will be offered to the City of Star via direct sale or other authority.

T. 5 N., R. 1 W., Boise Meridian, Ada County, Idaho

Section 31: N½SE¼;

Containing 80.00 acres, more or less
Appraised value $2,360,000.

Parcel 4. This isolated parcel near the City of Cascade will be offered for competitive sale.

T. 14 N., R. 3 E., Boise Meridian, Valley County, Idaho

Section 25: Lot 13;

Containing 8.76 acres, more or less.
Appraised value $1,095,000.

Parcel 5. This isolated parcel near existing developments in Canyon County will be offered to the City of Caldwell via direct sale or other authority.

T. 3 N., R. 3 W., Boise Meridian, Canyon County, Idaho

Section 15: Lots 2 and 3;

Containing 29.57 acres, more or less.
Appraised value $1,242,000.

Parcel 6. These lands will be offered for direct sale to Adams County for landfill purposes.

T. 15 N., R. 1 W., Boise Meridian, Adams County, Idaho

Section 17: NW¼NE¼;
Section 18: NW¼SE¼;

Aggregating 80.00 acres, more or less
Appraised value $102,000.

The following 28 parcels will be sold through open, competitive bidding.

Parcel 7.

T. 8 N., R. 2 W., Boise Meridian, Payette County, Idaho

Section 18: Lots 5, 6, E½SW¼;

Containing 158.64 acres, more or less.
Appraised value $15,864.

Parcel 8.

T.8 N., R. 2 W., Boise Meridian, Payette

County, Idaho
Section 19: NE¼, E½NW¼, NE¼SW¼, N½SE¼;

Containing 360.00 acres, more or less.
Appraised value $36,000.
Parcel 9.

T.8 N., R. 2 W., Boise Meridian, Payette County, Idaho
Section 20: NW¼;

Containing 160.00 acres, more or less.
Appraised value $16,000.
Parcel 10.

T.8 N., R. 3 W., Boise Meridian, Payette County, Idaho
Section 23: W½NE¼, SE¼NE¼;

Containing 120.00 acres, more or less.
Appraised value $12,000.
Parcel 11.

T.8 N., R. 3 W., Boise Meridian, Payette County, Idaho
Section 24: NE¼NW¼, S½NW¼, NE¼SW¼;

Containing 160.00 acres, more or less.
Appraised value $16,000.
Parcel 12.

T.10 N., R. 3 W., Boise Meridian, Washington County, Idaho
Section 26: NW¼NW¼;

Containing 40.00 acres, more or less.
Appraised value $4,000.
Parcel 13.

T.10 N., R. 3 W., Boise Meridian, Washington County, Idaho
Section 27: SW¼SE¼;

Containing 40.00 acres, more or less.
Appraised value $4,000.
Parcel 14.

T.11 N., R. 2 W., Boise Meridian, Washington County, Idaho
Section 1: Lot 1, SE¼NE¼;

Containing 80.18 acres, more or less.
Appraised value $8,018.
Parcel 15.

T.14 N., R. 2 W., Boise Meridian, Adams County, Idaho
Section 1: SE¼SW¼;

Containing 40.00 acres, more or less.
Appraised value $4,560.
Parcel 16.

T.15 N., R. 1 W., Boise Meridian, Adams County, Idaho
Section 3: Lot 4;

Containing 39.11 acres, more or less.
Appraised value $41,000.
Parcel 17.

T.15 N., R. 1 W., Boise Meridian, Adams County, Idaho
Section 9: S½NW¼;

Containing 80.00 acres, more or less.
Appraised value $160,000.
Parcel 18.

T.15 N., R. 2 W., Boise Meridian, Adams County, Idaho
Section 13: N½N½;

Containing 160.00 acres, more or less.
Appraised value $70,400.
Parcel 19.

T.17 N., R. 1 W., Boise Meridian, Adams County, Idaho
Section 5: Lot 4, SW¼NW¼;

Containing 73.45 acres, more or less.
Appraised value $8,373.
Parcel 20.

T.1 N., R. 3 W., Boise Meridian, Canyon County, Idaho
Section 26: SE¼NE¼;

Containing 40.00 acres, more or less.
Appraised value $19,280.
Parcel 21.

T.1 N., R. 3 W., Boise Meridian, Canyon County, Idaho
Section 25: SW¼NW¼;

Containing 40.00 acres, more or less.
Appraised value $19,280.
Parcel 22. Removed from sale.
Parcel 23.

T.8 N., R. 3 W., Boise Meridian, Payette County, Idaho
Section 33: S½S½;

Containing 160.00 acres, more or less.
Appraised value $16,000.
Parcel 24.

T.8 N., R. 2 W., Boise Meridian, Payette County, Idaho
Section 31: S½SE¼;

Containing 80.00 acres, more or less.
Appraised value $8,000.
Parcel 25.

T.8 N., R. 2 W., Boise Meridian, Payette County, Idaho
Section 32: SW¼NE¼, N½SW¼;

Containing 120.00 acres, more or less.
Appraised value $12,000.
Parcel 26.

T. 7 N., R. 3 W., Boise Meridian, Gem County, Idaho
Section 4: Lots 1, 2, 3, 4, S½N½, E½SE¼;

Containing 398.90 acres, more or less.
Appraised value $45,475.
Parcel 27.

T. 7 N., R. 3 W., Boise Meridian, Gem County, Idaho
Section 2: SW¼NE¼;

Containing 40.00 acres, more or less.
Appraised value $4,000.
Parcel 28.

T.15 N., R. 2 W., Boise Meridian, Washington County, Idaho
Section 35: NW¼SE¼;

Containing 40.00 acres, more or less.
Appraised value $4,000.
Parcel 29.

T.11 N., R. 1 E., Boise Meridian, Gem County, Idaho
Section 24: SW¼NW¼;

Containing 40.00 acres, more or less.
Appraised value $4,000.
Parcel 30.

T.11 N., R. 2 E., Boise Meridian, Gem County, Idaho
Section 19: Lot 7;

Containing 40.23 acres, more or less.
Appraised value $4,586.
Parcel 31.

T. 9 N., R. 2 E., Boise Meridian, Boise County, Idaho
Section 19: Lot 3;

Containing 22.25 acres, more or less.
Appraised value $2,225.
Parcel 32.

T. 9 N., R. 2 E., Boise Meridian, Boise County, Idaho
Section 18: Lot 2;

Containing 21.98 acres, more or less.
Appraised value $2,200.
Parcel 33.

T. 7 N., R. 2 W., Boise Meridian, Gem County, Idaho
Section 8 : NE¼NW¼;

Containing 40.00 acres, more or less.
Appraised value $4,000.
Parcel 34.

T. 7 N., R. 2 W., Boise Meridian, Gem County, Idaho
Section 17: NE¼NE¼;

Containing 40.00 acres, more or less.
Appraised value $4,000.
Parcel 35.

T. 7 N., R. 3 W., Boise Meridian, Payette County, Idaho
Section 5: Lot 1, SE¼NE¼;

Containing 80.08 acres, more or less.
Appraised value $8,080.

If tracts offered for direct sale are not purchased by the identified party(s), the subject tracts may subsequently be offered for open competitive sale.

The 1988 Cascade RMP identified parcels 6 through 35 as suitable for disposal subject to a site-specific analysis. An RMP amendment is required to allow the sale of parcels 1 through 5. BLM has prepared an Environmental Assessment (EA) for these proposed sales, including the plan amendment, pursuant to the National Environmental Policy Act. BLM will be accepting public comments on the proposed sale until March 10, 2008.

As of January 24, 2008, the above described land is segregated from appropriation under the public land laws, including the mining laws, except for the Recreation and Public Purposes Act and the sale provisions of the FLPMA. The segregative effect will terminate upon issuance of a patent, publication in the **Federal Register** of a termination of the segregation, or January 25, 2010, whichever first occurs, unless extended by the BLM State Director in accordance with 43 CFR 2711.1–2(d) prior to the termination date.

If tracts offered for direct sale are not purchased by the identified party(s), the subject tracts may subsequently be offered for open competitive sale.

Whether sold through direct or competitive sale, each of the above parcels will be transferred subject to the following terms, conditions, and reservations:

1. A reservation to the United States of a right-of-way for ditches and canals constructed by the authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945);

2. Pursuant to the requirements established by section 120(h) of the Comprehensive Environmental

Response, Compensation, and Liability Act [42 U.S.C. 9620(h)] (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1988 (100 Stat. 1670), notice is hereby given that the above-described lands have been examined and no evidence was found to indicate that any hazardous substances had been stored for one year or more, nor had any hazardous substances been disposed of or released on the subject property.

3. All purchasers/patentees, by accepting a patent, covenant and agree to indemnify, defend, and hold the United States harmless from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgments of any kind or nature arising from the past, present, and future acts or omissions of the patentees or their employees, agents, contractors, lessees, or any third party, arising out of or in connection with the patentee's use, occupancy, or operations on the patented real property. This indemnification and hold harmless agreement includes, but is not limited to, acts and omissions of the patentees and their employees, agents, contractors, or lessees, or any third party, arising out of or in connection with the use and/or occupancy of the patented real property which has already resulted or does hereafter result in: (1) Violations of Federal, state, and local laws and regulations that are now or may in the future become applicable to the real property; (2) Judgments, claims or demands of any kind assessed against the United States; (3) Costs, expenses, or damages of any kind incurred by the United States; (4) Releases or threatened releases of solid or hazardous waste(s), and/or hazardous substance(s), as defined by Federal or state environmental laws, off, on, into or under land, property and other interests of the United States; (5) Activities by which solid waste or hazardous substance(s) or waste, as defined by Federal and state environmental laws are generated, released, stored, used or otherwise disposed of on the patented real property, and any cleanup response, remedial action or other actions related in any manner to said solid or hazardous substance(s) or waste(s); or (6) Natural resource damages as defined by Federal and state law. This covenant shall be construed as running with the parcel of land patented or otherwise conveyed by the United States, and may be enforced by the United States in a court of competent jurisdiction.

The patent to the following parcels would be issued with a reservation of a right-of-way for a federal aid highway.

Parcel 1—IDBL–047699 FEDERAL AID HIGHWAY (SEC 17) Idaho Dept. of Transportation, Act of November 9, 1921 (42 Stat. 216)

Parcel 1—IDI–26915 FEDERAL AID HIGHWAY (SEC 317) Idaho Dept. of Transportation, Act of August 27, 1958 (23 U.S.C.317(A))

Parcel 16—IDI–4973 FEDERAL AID HIGHWAY (SEC 317) Idaho Dept. of Transportation, Act of August 27, 1958 (23 U.S.C. 317(A))

The following parcels would be transferred subject to specific valid existing rights, as described below.

Parcel 1—IDBL–056202 TRANSMISSION LINE RIGHT-OF-WAY Idaho Power Co., Act of March 4, 1911, as amended (43 U.S.C. 961)

Parcel 1—IDI–13054 TRANSMISSION LINE RIGHT-OF-WAY Idaho Power Co., Act of October 21, 1976 (43 U.S.C. 1761)

Parcel 1—IDI–20018 TRANSMISSION LINE RIGHT-OF-WAY Idaho Power Co., Act of October 21, 1976 (43 U.S.C. 1761)

Parcel 1—IDI–22927 ROAD RIGHT-OF-WAY Payette County, Act of October 21, 1976 (43 U.S.C. 1761)

Parcel 1—IDI–30003 TEL & TELEGRAPH RIGHT-OF-WAY Qwest, Act of October 21, 1976 (43 U.S.C. 1761)

Parcel 1—IDI–31924 ROAD RIGHT-OF-WAY Idaho Power Co., Act of October 21, 1976 (43 U.S.C. 1761)

Parcel 1—IDI–33588 POWER LINE RIGHT-OF-WAY Idaho Power Co., Various Authorities/Statutes

Parcel 2—IDI–001025 IRRIGATION FACILITY RIGHT-OF-WAY Farm Development Corp., Act of March 3, 1891, as amended (43 U.S.C. 946–949)

Parcel 2—IDI–0005012 TRANSMISSION LINE RIGHT-OF-WAY Idaho Power Co., Act of October 21, 1976 (43 U.S.C. 1761)

Parcel 2—IDI–0015221 TRANSMISSION LINE RIGHT-OF-WAY Idaho Power Co., Act of March 4, 1911, as amended (43 U.S.C. 961)

Parcel 2—IDI–0015222 TRANSMISSION LINE RIGHT-OF-WAY Idaho Power Co., Act of March 4, 1911, as amended (43 U.S.C. 961)

Parcel 2—IDI–20732 IRRIGATION FACILITY RIGHT-OF-WAY Bing/Frost Ranch Co., Act of July 26, 1866

Parcel 2—IDI–20932 IRRIGATION FACILITY RIGHT-OF-WAY Desert Sun Farms, Inc., Act of July 26, 1866

Parcel 2—IDI–29683 ROAD & PARKING RIGHT-OF-WAY Joe DeCleur, Act of October 21, 1976 (43 U.S.C. 1761)

Parcel 2—IDI–34099 ROAD RIGHT-OF-WAY Canyon County Solid Waste Dept., Act of October 21, 1976 (43 U.S.C. 1761)

Parcel 2—IDI–35131 ROAD RIGHT-OF-WAY Ralph Sevy, Act of October 21, 1976 (43 U.S.C. 1761)

Parcel 3—IDI–20849 ROAD RIGHT-OF-WAY Robert Morrison, Act of October 21, 1976 (43 U.S.C. 1761)

Parcel 3—IDI–30448 WATER FACILITY RIGHT-OF-WAY Star Sewer & Water, Act of October 21, 1976 (43 U.S.C. 1761)

Parcel 4—IDI–35649 TRAIL RIGHT-OF-WAY Southern Valley County Recreation District, Act of October 21, 1976 (43 U.S.C. 1761)

Parcel 6—IDI–22584 TEL & TELEGRAPH RIGHT-OF-WAY Council Telephone Co., Act of October 21, 1976 (43 U.S.C. 1761)

Parcel 6—IDI–33309 ROAD RIGHT-OF-WAY Adams County, Act of October 21, 1976 (43 U.S.C. 1761)

Parcel 6—IDI–33794 TRANSMISSION LINE RIGHT-OF-WAY Idaho Power Co., Act of October 21, 1976 (43 U.S.C. 1761)

Parcel 6—IDI–34097 TRANSMISSION LINE AND ROAD RIGHT-OF-WAY Idaho Power Co., Act of October 21, 1976 (43 U.S.C. 1761)

Parcel 6—IDI–34111 TEL & TELEGRAPH RIGHT-OF-WAY Cambridge Telephone, Act of October 21, 1976 (43 U.S.C. 1761)

Parcel 16—IDI–0733 TRANSMISSION LINE RIGHT-OF-WAY Idaho Power Co., Act of March 4, 1911, as amended (43 U.S.C. 961)

Parcel 16—IDI–22584 TEL & TELEGRAPH RIGHT-OF-WAY Council Telephone Co., Act of October 21, 1976 (43 U.S.C. 1761)

Parcel 16—IDI–31364 ROAD RIGHT-OF-WAY Alan Gamblin, Act of October 21, 1976 (43 U.S.C. 1761)

The following authorizations are revocable Land Use Permits that may or may not be included as valid existing rights on the affected patent, depending on whether or not the permits have been revoked prior to patent issuance.

Parcel 2—IDI–24390 LAND USE PERMIT—BEE HIVES Honeygold Corp., Act of October 21, 1976 (43 U.S.C. 1732)

Parcel 2—IDI–24410 LAND USE PERMIT—BEE HIVES Hamilton Honey LLC, Act of October 21, 1976 (43 U.S.C. 1732)

Parcel 2—IDI–24421 LAND USE PERMIT—AIR STRIP Valley Air Service, Act of October 21, 1976 (43 U.S.C. 1732)

The public lands will not be offered for sale until at least 60 days after the date of publication of this notice in the **Federal Register**, and then at no less than the appraised fair market value.

These lands will be offered for sale on May 6, 2008, pursuant to 43 CFR

2711.3–1. In the event of sale, the unreserved mineral estate will be conveyed simultaneously with the surface estate. The 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 the unreserved mineral interests. The purchaser will be required to pay a $50.00 non-refundable filing fee for conveyance of the available mineral interests.

Competitive Sale Procedures

The sales will be by sealed bid, followed by oral auction. Sealed bids must be received at the BLM Boise District Office at the above address no later than 4:30 p.m. MDT on the day before the sale. Federal law requires that bidders must be U.S. citizens 18 years of age or older, or in the case of a corporation, subject to the laws of any State of the U.S. Proof of citizenship shall accompany the bid.

At 10 a.m. MDT on May 6, 2008, sealed bids will be opened at the BLM Boise District Office, and the highest acceptable sealed bid will be determined for each parcel. An oral auction will follow the determination of the highest acceptable sealed bid at or in excess of the appraised fair market value, with the opening oral bid being for not less than the highest acceptable sealed bid. Oral bidding will continue until the highest bid is determined. If no oral bids are received, the highest acceptable sealed bid will be considered the purchaser. If neither a sealed nor an oral bid is received for a particular parcel, that parcel will remain available for over-the-counter sale at the appraised fair market value for a period of 180 days following the sale date.

The purchaser will have 30 days from the date of acceptance of the high bid to submit a deposit of 20 percent of the purchase price and the $50.00 filing fee for conveyance of mineral interests. The purchaser must remit the remainder of the purchase price within 180 days from the date of the sale. Payments must be by certified check, postal money order, bank draft or cashiers check payable to the U.S. Department of the Interior—BLM. Failure to meet conditions established for this sale will void the sale, and any monies received will be forfeited to the BLM.

Public Comments: For a period until March 10, 2008, the public and interested parties may submit written comments regarding the proposed sale to the BLM Four Rivers Field Manager at the above address. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, 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.

The BLM will make available for public review, in their entirety, all comments submitted by businesses or organizations, including comments by individuals in their capacity as an official or representative of a business or organization.

Any adverse comments on the proposed sales will be reviewed by the BLM Idaho State Director, who may sustain, vacate, or modify this realty action and issue a final determination. In the absence of any objections, the realty action will become the final determination of the Department of the Interior. (Authority: 43 CFR 2711.1–2(a)). Protests on the proposed plan amendment must be received or postmarked no later than February 25, 2008 and must be sent to the Director (760), Chief, Planning and Environmental Coordination, at the above address. Any protest to the plan amendment should include: (1) Name, address, telephone number and interest of protesting party, (2) identification of the issue being protested, (3) a statement on the parts of the plan being protested, (4) a copy of all documents addressing the issues that were submitted during the planning process, and (5) a concise statement explaining why the State Director's decision is believed to be in error. The State Director will make a final decision on this proposed plan amendment following the Governor's consistency review and resolution of any protests that may be received by the Director. (Authority: 43 CFR 1610.5–2) Parcels 1 through 5, which require a plan amendment, will not be sold prior to the completion of the plan amendment.

Dated: January 16, 2008.

John Sullivan,

Acting Four Rivers Field Manager.

[FR Doc. E8–1162 Filed 1–23–08; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF JUSTICE

Antitrust Division

Public Comment and Response on Proposed Final Judgment

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), the United States hereby publishes below five comments received on the proposed Final Judgment in *United States* v. *Federation of Physicians and Dentists,* Case No. 1:05–cv–431, which were filed on December 17, 2007, in the United States District Court for the Southern District of Ohio, together with the United States' response to the comments.

Copies of the comments and the response are available for inspection at the Department of Justice, Antitrust Division; 325 Seventh Street, NW.; Room 200; Washington, DC 20530 (telephone (202) 514–2481); and at the Office of the Clerk of the United States District Court for the Southern District of Ohio, Potter Stewart U.S. Courthouse, Room 103, 100 East Fifth Street, Cincinnati, Ohio 45202 (telephone (513) 564–7500). Copies of any of these materials may be obtained upon request and payment of a copying fee.

J. Robert Kramer II,

Director of Operations, Antitrust Division.

In the United States District Court for the Southern District of Ohio Western Division

United States of America, Plaintiff, vs. Federation of Physicians and Dentists, et al., Defendants.

[Case No. 1:05–cv–431]

Hon. Sandra S. Beckwith, C.J.

Hon. Timothy S. Hogan, M.J.

Plaintiff United States' Response to Public Comments

Pursuant to the requirements of the Antitrust Procedures and Penalties Act (''APPA'' or ''Tunney Act''), 15 U.S.C. 16(b)–(h), the United States submits this response to five public comments relating to the proposed Final Judgment that has been lodged with the Court for eventual entry in this case. After review of the comments, the United States continues to believe that the proposed Final Judgment will provide an effective and appropriate remedy for the antitrust violation alleged in the Complaint. Following publication of the comments and this response to them in the **Federal Register,** pursuant to 15 U.S.C. 16(d), the United States will request that the Court enter the proposed Final Judgment.

I. Procedural History

On June 24, 2005, the United States filed this civil antitrust action, alleging that the Federation of Physicians and Dentists (''Federation'') and Federation employee Lynda Odenkirk, along with physician co-defendants Drs. Warren Metherd, Michael Karram, and James Wendel, coordinated a conspiracy

among about 120 obstetrician-gynecologist physicians (''OB–GYNs'') practicing in greater Cincinnati, Ohio, that unreasonably restrained interstate trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. 1. The physician defendants agreed to a judgment that was filed concurrently with the Complaint and entered by this Court on November 14, 2005, as being in the public interest. (Dkt. Entry #36). The Federation and Ms. Odenkirk (the ''Federation defendants''), however, contested the charges.

On January 26, 2006, the United States filed with the Court a motion seeking entry of partial summary judgment on liability against the Federation defendants. (Dkt. entry ## 40, 47). After briefing on this motion was completed, the Federation defendants filed an unopposed motion requesting the Court to order that the case be referred to mediation. (Dkt. entry # 63). On April 14, 2006, the Court ordered that the case be referred to mediation.

Following two mediation conferences and protracted settlement negotiations, on June 19, 2007, the United States filed with the Court a settlement stipulation (Dkt. Entry # 81) with the Federation defendants, consenting to entry of the proposed Final Judgment (Dkt. entry # 81–2), which was lodged with the Court pending the parties' compliance with the APPA. On July 18, 2007, the United States published the Stipulation, proposed Final Judgment, and Competitive Impact Statement (''CIS'') (Dkt. Entry # 84) in the **Federal Register** 39450 (2007), as required by the APPA to facilitate public comments on the proposed Final Judgment. A summary of the terms of the proposed Final Judgment and CIS was published for seven consecutive days in the Cincinnati Enquirer from July 20 through July 26, 2007, and in the *Washington Post* from July 18 through July 24, 2007, also pursuant to the APPA. The 60-day period for public comments on the proposed Final Judgment began on July 27, 2007, and expired on September 24, 2007. During that period, five comments were submitted.

II. Summary of the Complainant's Allegations

The Federation is a membership organization of physicians and dentists, headquartered in Tallahassee, Florida. the Federation's membership includes economically independent physician groups in private practice in many states, including Ohio. The Federation has offered member physicians assistance in negotiating fees and other terms in their contracts with health care insurers.

In spring 2002, several Cincinnati OB–GYNs became interested in joining the Federation to negotiate higher fees from health care insurers. The physician defendants assisted the Federation in recruiting other Cincinnati-area OB–GYNs as members. By June 2002, the membership of the Federation had grown to include a large majority of competing OB–GYN physicians in the Cincinnati area.

Withe substantial assistance from the physician defendants and Ms. Odenkirk, the Federation coordinated and helped implement its members' concerted demands to insurers for higher fees and related terms, accompanied by threats of contract terminations. From September 2002 through the fall of 2003, Ms. Odenkirk communicated with the physician defendants and other cincinnati-area OB–GYN Federation members to coordinate their contract negotiations with health care insurers. Along with the physician defendants, Ms. Odenkirk developed a strategy to intensify Federation member physicians' pressure on health care insurers to renegotiate their contracts, including informing member physicians about the status of competing member groups' negotiations and taking steps to coordinate their negotiations.

The agreement coordinated by the Federation defendants forced Cincinnati-area health care insurers to raise fees paid to Federation member OB–GYNs above the levels that would likely have resulted if Federation members had negotiated competitively with those insurers. As a result of the conspirators' conduct, the three largest Cincinnati-area health care insurers each were forced to increase fees paid to most Federation member 0B-GYNs by approximately 15–20% starting July 1, 2003, followed by cumulative increases of approximately 20–25% starting January 1, 2004, and approximately 25–30% effective January 1, 2005. This conduct by Federation member OB-GYNs, coordinated by the Federation defendants, also caused other insurers to raise the fees that they paid to Federation OB-GYN members. The increased fees paid by health care insurers to Federation OB-GYN members in the Cincinnati area are ultimately borne by employers and their employees.

iii. Summary of Relief to be Obtained Under the Proposed Final Judgment

The proposed Final Judgment is designed to enjoin the Federation defendants from taking future actions that could facilitate private-practice physicians in coordinating their dealings with payers for health care services. It accordingly prohibits the Federation defendants from being involved in its private-practice members' negotiations or contracting with health insurers or other payers for health care services anywhere in the United States.

The proposed Final Judgment prohibits the Federation defendants from providing any services to any physician in private practice (defined as an ''independent physician'') regarding such physician's negotiation, contracting, or other dealings with any payer. The proposed Final Judgment also prohibits the Federation defendants from (1) representing any independent physician with any payer (including as a messenger); (2) reviewing or analyzing, for any such physician, any proposed or actual contract or contract term between the physician and any payer; and (3) communicating with any independent physician about the status of that physician's, or any other physician's, negotiations, contracting, or participation with any payer. The Federation defendants are also generally prohibited from communicating about any proposed or actual contract or contract term between any independent physician and any payer. In addition, the proposed Final Judgment enjoins the Federation defendants from responding to any question initiated by any payer, except to state that the Final Judgment prohibits such a response. Finally, the proposed Final Judgment generally prohibits the Federation defendants from training or educating, or attempting to train or educate, any independent physician in any aspect of contracting or negotiating with any payer.

The proposed decree includes exceptions to these prohibitions covering conduct that neither threatens competitive harm nor undermines the clarity of the prohibitions. For example, the proposed decree limits its prohibition on training or educating independent physicians in any aspect of contracting or negotiating with payers by allowing the Federation defendants to

(1) Speak on general topics (including contracting), when (a) invited to do so as part of a regularly scheduled medical educational seminar offering continuing medical education credit, (b) advance written notice has been given to Plaintiff, and (c) documents relating to what was said by the Federation defendants are retained by them for possible inspection by the United States.

(2) Publish articles on general topics (including contracting) in a regularly disseminated newsletter; and

(3) Provide education to independent physicians regarding the regulatory structure (including legislative developments) of workers compensation, Medicaid, and Medicare, except Medicare Advantage,

provided that such conduct does not violate any other injunctive provision of the proposed Final Judgment.

In a section titled ''permitted conduct,'' the proposed decree permits certain other conduct as well:

(1) Federation defendants may engage in activities involving physician participation in written fee surveys that are covered by the ''safety zone'' under Statement 6 of the 1996 Statements of Antitrust Enforcement Policy in Health Care, 4 Trade Reg. Rep. (CCH) ¶ 13,153, which addresses provider participation in exchanges of price and cost information;

(2) Federation defendants and Federation members may engage in lawful union organizational efforts and activities;

(3) Federation defendants may petition governmental entities in accordance with doctrine established in *Eastern Railroad Presidents Conference* v. *Noerr Motor Freight, Inc.,* 365 U.S. 127 (1961), and its progeny; and

(4) Federation physician members may choose independently, or with other members or employees of such member's bona fide solo practice or practice groups, the health insurers with which to contract, and/or to refuse to enter into discussions or negotiations with any health care payer.

The proposed Final Judgment clarifies that it does not alter the Federation's obligations under the decree entered by the district court in Delaware in a prior, similar case against the Federation, *United States* v. *Federation of Physicians and Dentists, Inc.,* CA 98–475 JJF (D. Del., consent judgment entered Nov. 6, 2002) (the ''*Delaware* decree''). If there is any conflict between the injunctive provisions of the proposed Final Judgment and the injunctive provisions or conduct permitted by the *Delaware* decree, the proposed Final Judgment controls. The proposed Final Judgment embodies more stringent relief than that provided by the *Delaware* decree because it prohibits the Federation, for example, from representing physicians in their dealings with payers as a messenger and reviewing and analyzing physician contracts with any payer. The *Delaware* decree had permitted such conduct in limited circumstances.

IV. Summary of Public Comments and the United States' Responses to Them

During the 60-day public comment period, the United States received comments from one individual and four medical societies. Upon review, the United States believes that nothing in the comments warrants a change in the proposed Final Judgment or suggests that the proposed Final Judgment is not in the public interest. None of the comments contend that the proposed decree fails adequately to redress the violations and competitive harm alleged in the Complaint. Rather, two of the comments contend that the proposed Final Judgment is too stringent, and another implies the same point. Two other comments contend that this case resulted from an unfair application of the antitrust laws to physicians in their dealings with insurers. The remaining comment generally criticizes what is characterized as an unreasonably aggressive antitrust enforcement policy by the Department of Justice and Federal Trade Commission with respect to physicians. The United States addresses these concerns below and explains why the proposed Final Judgment is appropriate.

A. Comments Questioning the Charges Brought Against the Federation Defendants

1. Summary of Comments Submitted by Dr. Michael Connair and the American Academy of Orthopaedic Surgeons

Dr. Michael Connair, an orthopedic surgeon in Connecticut and a Vice President of the defendant Federation of Physicians and dentists, has submitted a comment (attachment 1) that criticizes the United States' Competitive Impact Statement (''CIS'') (Dkt. Entry # 84) as ''reflect[ing] a misguided DOJ enforcement policy that ignores antitrust principles and that encourages anticompetitive behavior by insurers.'' According to Dr. Connair, the CIS ignores that Cincinnati ''physicians were forced to react to anti-competitive behaviors by Cincinnati insurers because the Department of Justice did not enforce antitrust principles against those insurers.''

Similarly, the American Academy of Orthopaedic Surgeons' comment (Attachment 2) expresses the Academy's belief that this case ''is the result of the antitrust laws not being applied equally to the insurance industry as they are to physicians or other professions,'' which ''would reduce competition in the insurance industry and, ultimately, harm consumers.'' The Academy's comment also asserts that ''[i]n this case, the physicians appeared to be reacting to anticompetitive behaviors by Cincinnati insurers which artifically lowered prices below Medicare levels.''

2. United States' Response to Comments Submitted by Dr. Michael Connair and the American Academy of Orthopaedic Surgeons

Dr. Connair's and the Academy's comments challenge the United States' decision to prosecute the defendants' alleged anticompetitive conduct, rather than alleged anticompetitive actions by health insurers. Such an argument is outside the scope of this APPA proceeding because the APPA does not permit the Court to review the efficacy or ''correctness'' of the United States' enforcement policy or its determination to pursue—or not pursue—a particular claim in the first instance. As explained by the District Court for the District of Columbia, in a Tunney Act ''public interest'' proceeding, the district court should not second-guess the prosecutorial decisions of the Antitrust Division regarding the nature of the claims brought in the first instance; ''rather, the court is to compare the complaint filed by the United States with the proposed consent decree and determine whether the proposed decree clearly and effectively addresses the anticompetitive harms initially identified.'' *United States* v. *The Thomson Corp,* 949 F. Supp. 907, 913 (D.D.C. 1996); *accord, United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1459 (D.C. Cir. 1995) (in APPA proceeding, ''district court is not empowered to review the actions or behavior of the Department of Justice; the court is only authorized to review the decree itself'').

Although the comments of Dr. Connair and the Academy are beyond the scope of an APPA proceeding, the United States nevertheless observes that their comments are incorrect as a matter of fact and law. The United States believes that the uncontested evidence and law presented in support of its motion for summary judgment, which the Court was not called on to decide in view of the parties' proposed settlement, strongly supports the Complaint's allegations that the Federation defendants violated the antitrust laws. (Dkt. Entry ## 1, 47). Further, even if the Federation defendants believed that Cincinnati insurers had colluded on payments made to OB–GYNs, as the comments imply, such circumstances would provide no defense for the Federation defendants' coordination of Cincinnati OB–GYNs price fixing. Controlling law is clear ''[t]hat a particular practice may be unlawful is not, in itself, a sufficient justification for collusion among competitors to prevent it.'' *FTC* v. *Indiana Fed'n of Dentists,* 476 U.S. 447, 465 (1986).

B. Comments Arguing that the Proposed Final Judgment is Overly Restrictive

1. Summary of Comments Submitted by the Connecticut State Medical Society, Connecticut Orthopedic Society, and Utah State Orthopaedic Society

The Connecticut State Medical Society (CSMS) comments (Attachment 3) that the proposed Final Judgment is ''unnecessarily restrictive and more onerous than final decrees typically proposed by both the [Department of Justice] and the Federal Trade Commission (FTC) under similar circumstances in that it precludes the Federation from engaging in *lawful* conduct including representing physicians in their dealing with payers as messengers and from reviewing and analyzing physician contracts with any third-party payer.'' The CSMS asks the United States to modify the proposed Final Judgment to allow the defendant Federation to participate in (1) qualified risk-sharing and qualified clinically integrated joint arrangements, (2) messenger-model arrangements, and (3) communications with physicians about insurer contracts. The Connecticut Orthopedic Society comments (Attachment 4) in support of the letter submitted by the CSMS.

The Utah State Orthopaedic Society's (''USOS's'') comment (Attachment 5) states that the defendant Federation has served as a messenger for orthopedists in Utah with productive results. Based on the Utah experience, the comment ''presume[s] that the activities in Cincinnati have been handled in a similar fashion by the Federation.'' The USOS's comment further expresses the ''hope * * * [that] the 'messenger model' throughout the country is managed legally by those that employ it.''

2. United States' Response to Comments Submitted by the Connecticut State Medical Society, Connecticut Orthopedic Society, and Utah State Orthopaedic Society

These comments seek entry of a decree that essentially tracks the *Delaware* decree. The United States had agreed to resolve its earlier case against the Federation, in part, to give the Federation an opportunity to conduct some of its activities in a lawful manner that should not have led to anticompetitive results. The Federation defendants' actions in Cincinnati, as alleged in the United States' Complaint (Dkt. Entry # 1) and demonstrated in its summary judgment brief (Dkt. Entry # 47), however, have shown that such a decree is insufficient to prevent the Federation defendants from engaging in substantial anticompetitive conduct and, therefore, that a more restrictive decree is appropriate. The Federation defendants' alleged conduct in Cincinnati demonstrates that the USOS's expressed ''hope'' that the Federation defendants have employed the ''messenger model'' appropriately elsewhere has not been realized.

Had the Federation defendants' complied with the *Delaware* decree, it plainly would have prevented them from coordinating Cincinnati OB-GYNs' fee negotiations with health insurers. The Federation defendants nonetheless have steadfastly maintained that their conduct challenged in this matter complied with the *Delaware* decree, which—like the proposed Final Judgment—is nationwide in scope. Accordingly, the United States decided in this matter to negotiate a more restrictive proposed Final Judgment with the Federation defendants that assures that the Federation will not again engage in conduct that has the anticompetitive effect alleged in the complaint. The proposed Final Judgment thus provides appropriate additional assurance that the type of conduct that occurred in Cincinnati, despite the *Delaware* decree, will not recur.

In short the orthopedic groups' comments fail to recognize that the Federation defendants' conduct in Cincinnati has shown that the *Delaware* decree is insufficient to prevent their recurrent anticompetitive conduct and, therefore, that a more stringent decree is required. ''While the resulting [proposed Final Judgment] may curtail the exercise of liberties that the [Federation defendants] might otherwise enjoy, that is a necessary and, in cases such as this, unavoidable consequence of the [recurrent] violation.'' *Nat'l Soc'y of Prof'l Eng'rs* v. *United States*, 435 U.S. 679, 697 (1978). Although the proposed Final Judgment ''goes beyond a simple proscription against the precise conduct previously pursued[,] that is entirely appropriate'' under the circumstances. *Id.* at 698.

Conclusion

After considering the five comments received, the United States continues to believe that the proposed Final Judgment reasonably and appropriately addresses the harm alleged in the Complaint. Therefore, following publication of this response to comments in the **Federal Register** and submission of the United States' certification of compliance with the APPA, the United States intends to request entry of the proposed Final Judgment once the Court determines that entry is in the public interest.

Dated: December 17, 2007.

Respectfully submitted,

For Plaintiff United States of America

Gregory G. Lockhart,
United States Attorney.
/s/ Gerald F. Kaminski
Gerald F. Kaminski,
Assistant United States Attorney,
Bar No. 0012532.
Office of the United States Attorney, 221 E. 4th Street, Suite 400, Cincinnati, Ohio 45202, (513) 684–3711.
/s/ Steven Kramer
Steven Kramer
Attorney, Antitrust Division.
U.S. Department of Justice, 1401 H Street, NW., Suite 4000, Washington, DC 20530, (202) 307–0997, *steven.kramer@usdoj.gov*.

BILLING CODE 4401–11–M

ATTACHMENT 1

MICHAEL P. CONNAIR, M.D.
ORTHOPAEDIC SURGERY
12 Village Street, Suite 8
North Haven, CT 06473
Phone: (203) 777-2044 Fax: (203) 773-3641

September 7, 2007

Joseph Miller., Esq., Acting Chief
United States Department of Justice
Antitrust Division
1401 H Street, N.W., Suite 4000
Washington, D.C. 20530

Via Federal Express

Dear Attorney Miller:

The "Plaintiff's Competitive Impact Statement Concerning the Proposed Final Judgment as to the Federation of Physicians & Dentists and Lynda Odenkirk" (Case No. 1:05-CV-431 filed on 7-2-07) is inaccurate in several respects and harmful not only to the Federation, but to any physician who must contract with a managed care insurer and chooses to use the third-party messenger system to negotiate a fair deal.

Here are the problems with the Competitive Impact Statement:

- The Statement ignores the fact that physicians were forced to react to anti-competitive behaviors by Cincinnati insurers because the Department of Justice did not enforce antitrust principles against those insurers. The DOJ allowed a monopsony of insurers to impose unrealistic contract terms on obstetricians and to fix prices below fair value. These insurers had driven prices to below Medicare levels, which created an unsustainable financial loss for those doctors. Most physicians charge at least 2-3 times Medicare rates as a fair price.

- The actions of the doctors are inaccurately described as a "...conspiracy to artificially raise fees by healthcare insurers to Federation members in the Cincinnati area... ". The doctors were actually trying to partially reverse the *artificial depression* of fees resulting from the concerted, unopposed and unwarranted fee depression by the insurance monopsony in Cincinnati.

- The Statement ignores the consequences of *not resisting* the artificial depression of fees by insurers in Cincinnati. Financial hardship caused by unfair reimbursement would have caused many Cincinnati obstetricians to stop practicing there, compromising patient access to a critical specialty. This is an example of price fixing by insurers resulting secondarily in harm

to the public; this anticompetitive pricing by insurers has not been addressed by the DOJ, typical of DOJ enforcement policy in general.

- The prosecution of doctors in Cincinnati is not an isolated case of the DOJ attacking physicians for alleged antitrust activity while ignoring the anticompetitive activities of insurers that triggered the physician actions. The AMA has cited more than twenty (20) antitrust cases against physicians in the last few years and not a single example of the DOJ prosecuting an insurance company for predatory contracting practices. The cases usually settle by consent decree because of the threat of huge defense costs. The cost to defend such cases properly is punitive, not within the reach of small physician organizations or a non-profit Union like the Federation of Physicians & Dentists. The cost to defend the orthopedic surgeons in Delaware from similar antitrust charges was $1.5 million. The one-sided antitrust enforcement policy of the DOJ and the political motivations for that policy are therefore not exposed publicly in court.

- The consent decree is supposed to "... eliminate a substantial restraint on price competition among competing ob-gyns..." The only real effect of the consent decree will be to eliminate physician resistance to the downward unopposed coordinated pressure on fees by insurers.

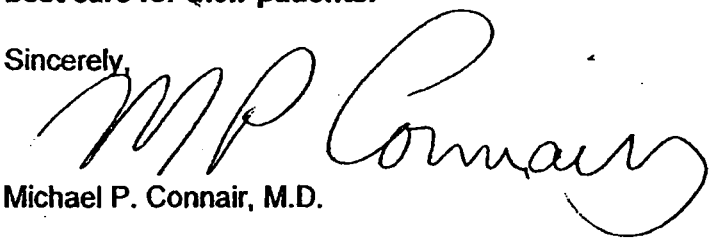
- Neutralizing the Federation will eliminate a strong proponent for the proper use of the third-party messenger system. The Federation has educated physicians in many states in its proper use, often preventing the misuse of the technique. Without an experienced nonprofit organization like the Federation, doctors will be less willing to use the third-party messenger system for fear of making errors resulting in DOJ prosecution.

- The insurers have the ear of the DOJ and the DOJ responds to requests from insurers to initiate the investigation and prosecution of physician organizations that resist unfair contracts and fee schedules. It is the experience of the Federation that the DOJ does *not* respond to similar physician requests for help against anti-competitive insurance company behavior including price fixing. Mr. Kramer has stated that the DOJ will prosecute insurers for price fixing. I ask that your department provide me with some examples of such investigations and/or prosecution of insurers.

- The one-sided DOJ enforcement policy against physicians and in favor of insurers perverts the intent of the Sherman Act. Antitrust rules are supposed to prevent huge corporations from taking advantage of consumers (patients) and small businesses (doctor offices). The large insurers in this case and similar cases use the DOJ as a weapon against physician resistance to unfair contracts to increase insurer profits.

This Competitive Impact Statement reflects a misguided DOJ enforcement policy that ignores antitrust principles and that encourages anticompetitive behavior by insurers. The enforcement policy interferes with the ability of physicians to manage a medical practice and to continue to provide the best care for their patients.

Sincerely,



Michael P. Connair, M.D.

Past President, Connecticut Orthopaedic Society
Vice President, National Union of Hospital of Healthcare Employees
Vice President, Federation of Physicians and Dentists
Provided oral and written testimony to House Committee on the Judiciary for Campbell Bill 1998, and written testimony for the Campbell/Conyers Bill 1999

ATTACHMENT 2

AAOS
AMERICAN ACADEMY OF ORTHOPAEDIC SURGEONS
AMERICAN ASSOCIATION OF ORTHOPAEDIC SURGEONS

6300 North River Road
Rosemont, Illinois 60018
P. 847.823.7186
F. 847.823.8125
www.aaos.org

September 11, 2007

Mr. Joseph Miller
Acting Chief, Litigation I Section
Antitrust Division
United States Department of Justice
1401 H Street, NW, Suite 4000
Washington, D.C. 20530

Re: *United States v. Federation of Physicians and Dentists*, Case No.: 1:05-CV-431, In the United States District Court for the Southern District of Ohio Western Division

Dear Mr. Miller:

The following are the written comments of the American Association of Orthopaedic Surgeons (AAOS) to the proposed judgment in *United States v. Federation of Physicians and Dentists*. The AAOS is making these comments pursuant to the 60 day comment period provided under 15 U.S.C.§ 16(b).

The AAOS is a not-for-profit national medical society, engaged in health policy and advocacy activities on behalf of musculoskeletal patients and the profession of orthopaedic surgery. The 22,000 members of the AAOS are orthopaedic surgeons concerned with the diagnosis, care, and treatment of musculoskeletal disorders. A priority of the AAOS is continuing access to quality, specialty care by all patients.

The AAOS is concerned that *Federation of Physicians and Dentists* is the result of the antitrust laws not being applied equally to the insurance industry as they are to physicians or other professions. This inequality could be because the complexity of insurance industry discourages vigorous enforcement of antitrust laws. If so, this would obviously give the insurance industry an unfair advantage in reducing prices and pushing more physicians out of the practice medicine. This is particularly damaging in critical specialties facing shortages such as obstetrics-gynecology. Uneven application of the antitrust laws, therefore, would reduce competition in the insurance industry and, ultimately, harm consumers.

Bone and Joint DECADE 2002-USA-2011

Specifically, in this case, the physicians appeared to be reacting to anticompetitive behaviors by Cincinnati insurers which artificially lowered prices below Medicare levels.

If you have any questions regarding these comments, please refer them to AAOS Assistant General Counsel Grant L. Nyhammer, 847.384-4050 or nyhammer@aaos.org. Thank you for your attention to this matter.

Cordially,

Richard N. Peterson

Richard N. Peterson
General Counsel

ATTACHMENT 3

160 St. Ronan Street, New Haven, CT 06511-2390 (203) 865-0587 FAX (203) 865-4997

September 12, 2007
Mr. Joseph Miller
Acting Chief, Litigation I Section
Antitrust Division
United States Department of Justice
1401 H Street, N.W., Suite 4000
Washington, D.C. 20530

Re: Comments of the Connecticut State Medical Society to the Proposed Final Judgment As To The Federation of Physicians and Dentists and Lynda Odenkirk, Case No. 1;05-cv-431

Dear Acting Chief Miller:

On June 19, 2007, the Department of Justice ("DOJ") entered its proposed Final Judgment (the "Final Judgment") as to the Federation of Physicians and Dentists (the "Federation") and Lynda Odenkirk (collectively, the "Federation defendants") in connection with the above-referenced matter. The DOJ thereafter filed its Competitive Impact Statement on July 2, 2007. Notification of the Final Judgment and Competitive Impact Statement was published in the Federal Register, Vol. 72, No. 137 on July 18, 2007. The Connecticut State Medical Society (CSMS) files these Comments in response to the terms of the Final Judgment.

I. INTRODUCTION

CSMS, chartered by the Connecticut State legislature in 1792 and believed to be one of the nation's oldest such groups in continuous operation, on behalf of its more than 7,000 physician and medical student members, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. § 16(b), submits these Comments concerning the Final Judgment as to the Federation defendants that the parties have submitted to entry in the above-captioned matter.

CSMS, a federation of eight component county medical associations, is a constituent state entity of the American Medical Association (AMA). Founded by the physician-patriots of the American Revolution, CSMS operates from a heritage of democratic principles embodied in its Charter and Bylaws. CSMS has begun its third century as the voice of medicine in Connecticut with a mission to serve physicians and their patients. CSMS is therefore inherently positioned to provide its expert comment concerning the lawful representation of physicians for the betterment of patients.

As discussed more fully below, CSMS finds the Final Judgment's prohibitions unnecessarily restrictive and more onerous than final decrees typically proposed by both

the DOJ and the Federal Trade Commission (FTC) under similar circumstances in that it precludes the Federation from engaging in *lawful* conduct including, representing physicians in their dealings with payers as a messenger and from reviewing and analyzing physician contracts with any third-party payer. It is therefore CSMS' objective in submitting these Comments to request that the DOJ amend the Final Judgment to allow the Federation and its physician members to engage in generally accepted common and lawful practices.

II. ARGUMENT

(1) The Final Judgment Is Overly Stringent in that it Bars the Federation from Engaging in *Lawful* Conduct On Behalf of its Physician Members.

Recent orders issued by the DOJ and the FTC to settle charges that physician membership organizations acting on behalf of their members engaged in unlawful agreements to raise fees received from health plans, have consistently permitted these organizations to engage in lawful activity on behalf of their physician members. See *In the Matter of Memorial Hermann Health Network Providers,* Docket No. C-4104 (Decision and Order entered Jan. 8, 2004); *In the Matter of Health Care Alliance of Laredo, L.C.,* Docket No. C-4158 (Decision and Order issued Mar. 23, 2006): *In the Matter of Physician Network Consulting, L.L.C., et al.,* Docket No. C-4094 (Decision and Order issued Aug. 27, 2003); *In the Matter of Advocate Health Partners, et al.,* File No. 031 0021 (Dec. 19, 2006); *In the Matter of New Century Health Quality Alliance, Inc., et al.,* Docket No. C-4169 (Decision and Order issued Sept. 29, 2006); *United States v. Federation of Physicians and Dentists, Inc.,* CA 98-475 JJF (D. Del., judgment entered Nov. 6, 2002) (hereinafter "DOJ/FTC Decisions"). Specifically, these decrees have excluded the following lawful arrangements and activities from their prohibitions: (1) "qualified risk-sharing joint arrangements"; (2) "qualified clinically-integrated joint arrangements"; (3) messenger model arrangements and (4) lawful communication with and representation of physician members. See DOJ/FTC Decisions, supra. In this case, however, the Final Judgment bars the Federation defendants from engaging in lawful activity officially recognized in the 1996 Department of Justice/Federal Trade Commission Statements of Antitrust Enforcement Policy in Health Care ("1996 Statements") and ordinarily permitted under final decrees issued by the DOJ and FTC in comparable cases.

The nature of the Federation defendants' case is similar to that of the typical DOJ/FTC Decisions in that it concerns alleged agreements among competing physicians acting through a physician membership organization to fix fees they charge health plans and other third-party payors. See DOJ/FTC Decisions, supra. Therefore, consistent with recent orders, CSMS urges the DOJ to modify the Final Judgment to allow the Federation to continue engaging in lawful activity, on behalf of its physician members, ordinarily excluded from DOJ and FTC final decree prohibitions. CSMS' proposed modification would promote fairness while preserving the "essence of the Final Judgment" by restraining the Federation defendants from engaging in unlawful antitrust activity, and

specifically barring them "from participating in any unlawful conspiracy to increase fees for physician services." See Final Judgment.

(a). Qualified Risk-Sharing and Qualified Clinically Integrated Joint Arrangements

The DOJ should amend the Final Judgment to allow the Federation an opportunity to participate in qualified risk-sharing and clinically-integrated joint arrangements. Typical DOJ and FTC final orders concerning providers' alleged collective bargaining with health plans and other third-party payors have not precluded physician membership organizations from participating in "qualified risk-sharing" and "qualified clinically-integrated" joint arrangements. See DOJ/FTC Decisions, supra. The Final Judgment, however, is significantly more onerous and prohibitive than recent orders in that it bars the Federation from participating in these arrangements on behalf of its physician membership. CSMS therefore proposes that the DOJ modify the Final Judgment to allow the Federation the ability to participate in these same lawful arrangements on behalf of its physician members.

(b). Messenger Model

The DOJ should modify the Final Judgment to permit the Federation to engage in messenger model arrangements on behalf of its members. As outlined in the 1996 Statements, both the DOJ and the FTC have officially recognized that "[a]rrangments that are designed simply to minimize the costs associated with the contracting process, and that do not result in a collective determination by the competing network providers on prices or price-related terms, are not per se illegal price fixing." Statement 9(C), 1996 Statements. Indeed, both agencies acknowledged that legitimate messenger model arrangements "facilitate contracting between providers and payers and avoid price-fixing agreements among competing network providers". Id.

The DOJ and FTC, in its 1996 Statements, identified four ways by which physician membership organizations can lawfully operate messenger model arrangements: (1) "network providers may use an agent or third party to convey to purchasers information obtained individually from the providers about the prices or price-related terms that the providers are willing to accept"; (2) "the agent may convey to the providers all contract offers made by purchasers, and each provider then makes an independent, unilateral decision to accept or reject the contract offers"; (3) "the agent may have received from individual providers some authority to accept contract offers on their behalf"; and (4) "[t]he agent may also help providers understand the contracts offered, for example by providing objective or empirical information about the terms of an offer (such as a comparison of the offered terms to other contracts agreed to by network participants)." Statement 9(C), 1996 Statements.

DOJ and FTC orders have generally permitted physician membership organizations to enter into arrangements under which they will act as messengers or agents on behalf of their members with payors regarding contracts, subject to notification requirements. See

DOJ/FTC Decisions, supra. These organizations typically must provide sixty (60) days written notice to the agency prior to entering into any arrangement with any physicians under which the organization proposes to act as a messenger, or as an agent on behalf of any physicians, with payors regarding contracts. See DOJ/FTC Decisions. Most notably, the Delaware district court in *United States v. Federation of Defendants, Inc.* ("Delaware Decree"), supra, which the DOJ, in the present case, explicitly recognized as "similar" in nature to the present case, did not bar the Federation from *lawfully* representing physicians in their dealings with payers as a messenger. In the present matter, the Final Judgment, which lacks any explanation for this considerable inequity, stands in stark contrast to the Delaware Decree in addition to decisions rendered in other comparable cases. See DOJ/FTC Decisions, supra. CSMS therefore recommends that the DOJ modify the Final Judgment to allow the Federation to participate in all *lawful* messenger model arrangements on behalf of its physician membership.

(c) Lawful Communication With and Representation of Physician Members

The Final Judgment unnecessarily precludes the Federation defendants from other lawful conduct typically excluded from final decree prohibitions issued by the DOJ and FTC. See DOJ/FTC Decisions, supra. The Delaware Decree, for example, permitted the Federation to communicate to a physician member, at that physician's request, "accurate, factual, and objective information about a proposed payer contract offer or contract terms," and to "objectively review and analyze terms and conditions of any proposed or actual payer contract" subject to certain restrictions. See Delaware Decree, Section 5, supra. The Final Judgment, however, precludes the Federation defendants from "providing ***any*** services to ***any*** physician in private practice regarding such physician's negotiation, contracting, or other dealings with ***any*** payors" and explicitly prohibits them from "training or educating, or attempting to train or educate, any independent physician in any aspect of contracting or negotiation with any payor." See Final Judgment, pp. 4-5 (emphasis added). The prohibitions are so far-reaching and restrictive that they are excessively punitive in nature. CSMS therefore suggests that the DOJ modify the Final Judgment to authorize the Federation defendants to engage in such lawful practices.

(2) The Purpose of § 4 of the Sherman Act Is To Prevent Recurrence of *Unlawful* Conduct

Amending the Final Judgment to allow Federation defendants to engage in the type of lawful activity discussed above would be consistent with the Sherman Act's enforcement provisions. Section 4 of the Sherman Act (the "Act"), provides in relevant part: "it shall be the duty of the several district attorneys of the United States...to institute proceedings in equity to prevent and restrain such violations [of the Act]." 15 U.S.C. § 4. Absent from this provision, however, is language indicating that the purpose of such proceedings is to prohibit *lawful* activity. Moreover, the 1996 Statements explicitly recognize that multiprovider networks engaging in legitimate arrangements, including the messenger model, can offer procompetitive benefits to consumers. Accordingly, CSMS proposes that the DOJ amend the Final Judgment to remedy the alleged illegal concerted conduct, while permitting the Federation to engage in lawful

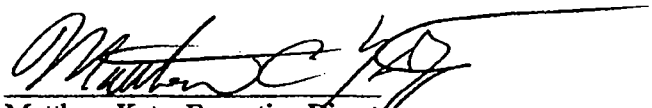
activities on behalf of its physician members consistent with past DOJ/FTC orders, rulings and final judgments.

III. CONCLUSION

The Final Judgment is so restrictive that it effectively precludes the Federation and potentially its physician members from engaging in legal activities associated with past rulings, as well as from communicating within the network regarding patient care in general. Not only does the all-encompassing nature of the prohibitions unreasonably interfere with the physician members' livelihood, but it also threatens the quality of patient care. Furthermore, the Final Judgment's impact could potentially impede the Federation's communication and activities not only on behalf of members within this particular organization, but also on behalf of the organization itself and its individual physician members.

For all the foregoing reasons, CSMS urges the DOJ to reconsider the terms of the Final Judgment to permit the Federation to engage in the type of lawful conduct, discussed in detail above, on behalf of its physician members.

Sincerely,



Matthew Katz, Executive Director

ATTACHMENT 4

September 18, 2007

FIRST CLASS MAIL
Certified Mail, Return Receipt Requested
Mr. Joseph Miller,
Acting Chief, Litigation I Section
Antitrust Division
United States Department of Justice
1401 H Street, N.W., Suite 4000
Washington, D.C. 20530

Re: Comments of the Connecticut Orthopedic Society to the Proposed Final Judgment As To The Federation of Physicians and Dentists and Lynda Odenkirk, Case No. 1:05-cv-431

Dear Acting Chief Miller:

This letter is in reference to the proposed Final Judgment ("Final Judgment") as to the Federation of Physicians and Dentists (the "Federation") and Lynda Odenkirk" (collectively, the "Federation defendants") in connection with the above-referenced matter.

The Connecticut Orthopedic Society (COS), a membership organization of orthopedic surgeons in Connecticut, requests that the Final Judgment, which is unnecessarily restrictive and more onerous than final decrees typically entered by both the Department of Justice (DOJ) and the Federal Trade Commission (FTC), be amended to allow the Federation and its physician members to engage in generally accepted common and lawful practices.

COS strongly supports the public comment submitted by the Connecticut State Medical Society (CSMS). As detailed below in these Comments, COS affirms its position that the Final Judgment should be amended to:

- Permit the Federation to engage in messenger model arrangements on behalf of its members, an arrangement that both the DOJ and FTC officially recognized in the 1996 Department of Justice/Federal Trade Commission Statements of Antitrust Enforcement Policy in Health Care ("1996 Statements").

- Allow the Federation an opportunity to participate in qualified risk-sharing and clinically-integrated joint arrangements. Typical decrees entered by the DOJ and

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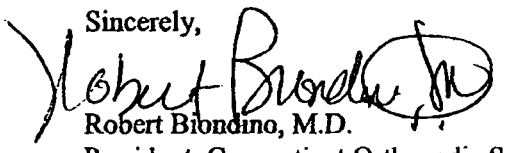
WEST HARTFORD, CONNECTICUT 06107
phone (860) 561-5205 • fax (860-) 561-5514 • www.ctortho.org

FTC have not precluded physician membership organizations from participating in qualified joint arrangements. COS therefore strongly urges the DOJ to modify the terms of the Final Judgment to allow the Federation the ability to participate in these same lawful arrangements on behalf of its physician membership.

ξ Permit the Federation to train, educate or attempt to train or educate any independent physician in any aspect of contracting or negotiating with any payor. While previous decrees have generally allowed physician membership organizations to communicate at a physician's request, these prohibitions are so far-reaching and restrictive in that they preclude the Federation from engaging in any of the foregoing practices on behalf of its physician members.

For all the foregoing reasons, COS requests that the DOJ modify the Final Judgment to permit the Federation to engage all of the lawful conduct outlined above on behalf of its members. Thank you for your attention to this critical matter.

Sincerely,



Robert Biondino, M.D.
President, Connecticut Orthopedic Society

ATTACHMENT 5

August 30, 2007

Council Members

Vernon J. Cooley, M.D.
President

Terry I. Finlayson, M.D.
President Elect

E. Marc Mariani, M.D.
Past President

Mark C. Wankier
Executive Director

Dean Walker, M.D.
Paul Winterton, M.D.
Advocacy & Legislative Oversight

Kade C. Huntsman, M.D.
Financial Oversight

Timothy C. Beals, M.D.
Third Party Relations

Jeffrey Sorensen, M.D.
Practice Management

Reed Fogg, M.D.
Marketing & Public Relations

Michael C. Holmstrom, M.D.
Education & CME

Douglas T. Hutchinson, M.D.
University of Utah Representative

Michael Callahan, M.D.
Dennis H. Gordon, M.D.
J. Lynn Smith, M.D.
Member-at-Large

John S. Bradley
Legal Advisor

Joseph Miller
Acting Chief, Litigation I Section
Antitrust Division
United States Department of Justice
1401 H Street, N.W. Suite 4000
Washington, D.C. 20530

Dear Sir:

The purpose of this letter is to comment on the Impact Statement and Consent Decree pending from the Department of Justice toward the Federation of Physicians and Dentists (Federation) and its effects on the Cincinnati OB-GYNS that employ their services.

I believe the Utah State Orthopedic Society (USOS) has a germane example in regard to the appropriate use of the Federation and the "messenger model". While the use of the "messenger model" in the state of Utah among Orthopedist has an approximate 8 – 9 year history its presence in Utah became more formal 5 years ago when the Federation of Physicians and Dentist helped the USOS organize itself into a functioning society that supplies meaningful information and education to it members, via a representing Board of Councilors and an annual educational conference.

The history the USOS has had with the Federation of Physicians and Dentists has been nothing but professional and extremely cognizant of the legal operating parameters of the "messenger model". The USOS from the beginning was counseled and has operated under the clear understanding from the Federation that the "messenger model" is intended only to provide efficiencies in the contracting process by allowing representation from a "messenger" dedicated to such activities rather than a physician trying to practice medicine and trying to negotiate such contracts simultaneously. While a "messenger" may legally represent several competing orthopedists or their practices it is clear that the "messenger" can never negotiate or represent physicians collectively; all of the negotiations must be kept confidential on an individual decision-making level. The Federation has always operated in Utah in this fashion.

The USOS has always viewed our relationship with the Federation as educational and informational in nature but never as a tool to increase leverage or position in the Utah market. As a physician, my ability to balance a busy patient schedule and become an expert in insurance terms, conditions and contract language is extremely limited. Speaking as an individual practitioner I can only do so many things in a single day. I admittedly am disadvantaged when it comes to my negotiations with the insurance industry experts but

P.O. Box 17184 · Salt Lake City, UT · 84117-7184 · Fax: 801.284-8699

Page 2

through the proper use of the "messenger model" have become at least somewhat more educated in making rational decisions for my practice. I believe this education has had the effect of making the physician and insurance markets in the state of Utah more competitive, not less.

From our experience in Utah I can only presume that the activities in Cincinnati have been handled in a similar fashion by the Federation. I hope the use of the "messenger model" through out the country is managed legally by those that employ it. I also hope that where the "messenger model" is being used appropriately that it will be protected by the Department of Justice for the benefit of physicians and patients that realize such an important benefit from it.

From a Utah perspective I would judge that monopoly power is not held with the physicians but rather with the insurers and one system in particular. We trust that the Department of Justice is carefully monitoring this side of the medical industry and the powerful, potentially controlling, organizations that exist in it as well.

I hope you find this information helpful, thank you for your consideration.

Respectfully,

Vernon J. Cooley, M.D.
President, Utah State Orthopedic Society

Mark Wankier
Executive Director, Utah State Orthopedic Society

[FR Doc. 08–227 Filed 1–23–08; 8:45 am]
BILLING CODE 4401–11–C

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

January 17, 2008.

The Department of Labor (DOL) hereby announces the submission of the following public information collection requests (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each ICR, with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin King on 202–693–4129 (this is not a toll-free number)/e-mail: *king.darrin@dol.gov.*

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: John Kraemer, OMB Desk Officer for the Occupational Safety and Health Administration (OSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7316/Fax: 202–395–6974 (these are not toll-free numbers), e-mail: *OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register**. In order to ensure the appropriate consideration, comments should reference the OMB Control Number (see below).

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration.

Type of Review: Extension without change of a previously approved collection.

Title of Collection: Notice of Alleged Safety or Health Hazards.

OMB Control Number: 1218–0064.

Agency Form Number: OSHA–7.

Affected Public: Individuals or households.

Estimated Number of Respondents: 48,298.

Estimated Total Annual Burden Hours: 12,775.

Estimated Total Annual Costs Burden: $990.

Description: The OSHA–7 Form is used by employees who wish to report unhealthful and/or unsafe conditions at their place of employment. This information is used by OSHA to evaluate the alleged hazards and to schedule an inspection. For additional information, see related notice published at 72 FR 61377 on October 30, 2007.

Agency: Occupational Safety and Health Administration.

Type of Review: Extension without change of a previously approved collection.

Title of Collection: 29 CFR Part 1904 Recordkeeping and Reporting Occupational Injuries and Illnesses.

OMB Control Number: 1218–0176.

Agency Form Numbers: OSHA–300; OSHA–300A; and OSHA–301.

Affected Public: Private Sector: Business or other for-profits.

Estimated Number of Respondents: 1,541,900.

Estimated Total Annual Burden Hours: 3,072,980.

Estimated Total Annual Costs Burden: $0.

Description: The Occupational Safety and Health Act (Pub. L. 91–596) and 29 CFR Part 1904 prescribe that certain employers maintain records of job-related injuries and illnesses. The data are needed by OSHA to carry out intervention and enforcement activities that help ensure workers are provided with safe and healthful workplaces. The data are also used by the Bureau of Labor Statistics in order to produce national statistics on occupational injuries and illnesses (See OMB Number 1220–0045, Survey of Occupational Injuries and Illnesses). For additional information, see related notice published at 72 FR 60028 on October 23, 2007.

Darrin A. King,

Acting Departmental Clearance Officer.

[FR Doc. E8–1194 Filed 1–23–08; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL CREDIT UNION ADMINISTRATION

Community Development Revolving Loan Fund for Credit Unions

AGENCY: National Credit Union Administration.

ACTION: Notice of application period.

SUMMARY: The National Credit Union Administration (NCUA) will accept applications for participation in the Community Development Revolving Loan Fund's [Fund] Loan Program in September 2008, subject to availability of funds. The Fund's total appropriation is $13.4 million. As of December 31, 2007, the Fund's loan portfolio totaled to $13.3 [1] million. Application procedures for the 2008 Fund Loan Program will be posted to the NCUA Web site.

DATES: Applications can be submitted starting on September 1, 2008, and closing on November 30, 2008.

ADDRESSES: Applications for participation may be obtained from and should be submitted to: NCUA, Office of Small Credit Union Initiatives, 1775 Duke Street, Alexandria, VA 22314–3428.

FOR FURTHER INFORMATION CONTACT: Tawana James, Director, Office of Small Credit Union Initiatives at the above address or telephone (703) 518–6610.

SUPPLEMENTARY INFORMATION: Part 705 of the NCUA Rules and Regulations implements the Community Development Revolving Loan Fund (Fund) for Credit Unions. The purpose of the Fund is to assist officially designated ''low-income'' credit unions in providing basic financial services to residents in their communities that result in increased income, home ownership, and employment. The Fund makes available low interest loans in the aggregate amount of $300,000 to qualified participating ''low-income'' designated credit unions. Interest rates are currently set at one percent, subject to change depending on market interest rates.

Specific details regarding availability and requirements for technical assistance grants from the Fund will be published in a Letter to Credit Unions and on NCUA's Web site at *http://www.ncua.gov/*. Fund participation is limited to existing credit unions with an official ''low-income'' designation.

This notice is published pursuant to Section 705.9 of the NCUA Rules and

[1] Total outstanding loans at year-end 2007 amounted to $13.3 million. One loan commitment, in the amount of $150,000 has been approved and will be funded as monies become available.

Regulations that states NCUA will provide notice in the **Federal Register** when funds in the program are available.

By the National Credit Union Administration Board on January 17, 2008.

Mary F. Rupp,

Secretary, NCUA Board.

[FR Doc. E8–1147 Filed 1–23–08; 8:45 am]

BILLING CODE 7535–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on February 6, 2008, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, February 6, 2008, 8:30 a.m. Until 10 a.m.

The Subcommittee will discuss proposed ACRS activities and related matters. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Officer, Mr. Sam Duraiswamy (telephone: 301–415–7364) between 7:30 a.m. and 4 p.m. (ET) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 26, 2007 (72 FR 54695).

Further information regarding this meeting can be obtained by contacting the Designated Federal Officer between 7:30 a.m. and 4 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes in the agenda.

Dated: January 15, 2008.

Charles G. Hammer,

Acting Chief, Reactor Safety Branch.

[FR Doc. E8–1071 Filed 1–23–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting Notice

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold a meeting on February 7–9, 2008, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Monday, October 22, 2007 (72 FR 59574).

Thursday, February 7, 2008, Conference Room T–2B3, Two White Flint North, Rockville, Maryland

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10:30 a.m.: Final Review of the License Renewal Application for the Vermont Yankee Nuclear Power Station (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and Entergy Nuclear Operations regarding the License Renewal Application for the Vermont Yankee Nuclear Power Station and the associated NRC staff's Final Safety Evaluation Report.

10:45 a.m.–12 p.m.: Draft Final Revision to Regulatory Guide 1.45 (DG–1173), "Guidance on Monitoring and Responding to Reactor Coolant System Leakage" (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding draft final Revision 1 to Regulatory Guide 1.45 (DG–1173) and the staff's resolution of public comments.

1 p.m.–3 p.m.: Proposed Licensing Strategy for the Next Generation Nuclear Plant (NGNP) (Open/Closed)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and Department of Energy regarding the proposed licensing strategy for the Next Generation Nuclear Plant.

[Note: A portion of this session may be closed to prevent disclosure of information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action pursuant to 5 U.S.C. 552b(c)(9)(B).]

3:15 p.m.–5 p.m.: Cable Response to Live Fire (CAROLFIRE) Testing and Fire Model Improvement Program (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and its contractors regarding the results of the CAROLFIRE Testing and Fire Model Improvement Program, including staff's resolution of public comments.

5:15 p.m.–7 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting, as well as a proposed report on State-of-the-Art Reactor Consequence Analysis (SOARCA) program.

Friday, February 8, 2008, Conference Room T–2B3, Two White Flint North, Rockville, Maryland

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10:30 a.m.: Proposed BWR Owners Group (BWROG) Topical Report on Methodology for Calculating Available Net Positive Suction Head (NPSH) for ECCS Pumps (Open/Closed)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and the BWR Owners Group regarding the proposed topical report on Methodology for Calculating the Available NPSH for ECCS Pumps, including NRC staff's position on this topical report.

[Note: A portion of this session may be closed to discuss and protect information that is proprietary to BWROG and their contractors pursuant to 5 U.S.C. 552b(c)(4).]

10:45 a.m.–11:30 a.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee (Open)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings. Also, it will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business, including anticipated workload and member assignments.

11:30 a.m.–11:45 a.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations to comments and

recommendations included in recent ACRS reports and letters.

11:45 a.m.–12 p.m.: Subcommittee Report (Open)—The Committee will hear a report by the Chairman of the ACRS Subcommittee on Reliability and Probabilistic Risk Assessment (PRA) regarding Draft NUREG–1855, ''Guidance on the Treatment of Uncertainties Associated with PRAs in Risk-Informed Decisionmaking,'' that was discussed during the meeting on December 19, 2007.

1 p.m.–3 p.m.: Draft ACRS Report on the NRC Safety Research Program (Open)—The Committee will discuss the draft ACRS report to the Commission on the NRC Safety Research Program.

3:15 p.m.–7 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports.

Saturday, February 9, 2008, Conference Room T–2B3, Two White Flint North, Rockville, Maryland

7:30 a.m.–9:30 a.m.: Draft ACRS Report on the NRC Safety Research Program (Open)—The Committee will continue its discussion of the draft ACRS report on the NRC Safety Research Program.

9:45 a.m.–1 p.m.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports.

1 p.m.–1:30 p.m.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 26, 2007 (72 FR 54695). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Electronic recordings will be permitted only during the open portions of the meeting. Persons desiring to make oral statements should notify the Cognizant ACRS staff named below five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Cognizant ACRS staff prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Cognizant ACRS staff if such rescheduling would result in major inconvenience.

In accordance with Subsection 10(d) (Pub.L. 92–463), I have determined that it may be necessary to close portions of this meeting noted above to discuss and protect information classified as proprietary to BWROG, and their contractors pursuant to 5 U.S.C. 552b(c)(4), and information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action pursuant to 5 U.S.C. 552b(c)(9)(B).

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, as well as the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting Mr. Girija S. Shukla, Cognizant ACRS staff (301–415–6855), between 7:30 a.m. and 4 p.m., (ET). ACRS meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr@nrc.gov*, or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/* (ACRS & ACNW Mtg schedules/agendas).

Video teleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m., (ET), at least 10 days before the meeting to ensure the availability of this service.

Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

Dated: January 17, 2008.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. E8–1189 Filed 1–23–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittee Meeting on Safety Research Program; Notice of Meeting

The ACRS Subcommittee on Safety Research Program will hold a meeting on February 5, 2008, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, February 5, 2008—9:30 a.m. Until the Conclusion of Business

The Subcommittee will discuss the scope of long-term research the agency needs to consider. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Dr. Hossein P. Nourbakhsh (Telephone: 301–415–5622) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 26, 2007 (72 FR 54695).

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4:15 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: January 15, 2008.

Charles G. Hammer,

Acting Chief, Reactor Safety Branch.

[FR Doc. E8–1073 Filed 1–23–08; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS–291]

WTO Dispute Settlement Proceedings Regarding Measures of the European Communities Affecting the Approval and Marketing of Biotech Products

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (''USTR'') is providing notice that on January 17, 2008, the United States submitted to the World Trade Organization (''WTO'') a request for authorization to suspend WTO concessions and other obligations with respect to the European Communities (''EC'') in an amount equal to the level of nullification and impairment resulting from EC non-compliance with the WTO recommendations and rulings. Under a sequencing agreement with the EC, that request will be referred to arbitration and the arbitration will be suspended while the United States and EC continue to try to resolve this dispute and related matters. To prepare for the possibility that the arbitration is resumed and the WTO Dispute Settlement Body (''DSB'') authorizes the United States to suspend WTO concessions with respect to the EC, USTR is inviting written comments on action that USTR should take to exercise such an authorization. In particular, USTR seeks written comments with respect to the specific products of the EC or EC member States, and/or with respect to the specific member States of the EC, that should be subject to a suspension of WTO concessions, such as through increases of rates of duty above current rates.

DATES: Comments are requested to be submitted on or before March 21, 2008.

ADDRESSES: Comments should be submitted either (i) electronically, to *FR0805@ustr.eop.gov,* with ''EC-Biotech Dispute'' in the subject line, or (ii) by fax, to Sandy McKinzy at 202–395–3640, with a confirmation copy sent electronically to the e-mail address above.

FOR FURTHER INFORMATION CONTACT: Melissa Clarkson, Director, Agricultural Affairs, (202) 395–6127, or William Busis, Associate General Counsel and Chair, Section 301 Committee, (202) 395–3150.

SUPPLEMENTARY INFORMATION:

EC-Biotech Dispute

USTR has previously provided notice and requested public comment regarding the establishment on August 29, 2003, of a WTO panel at the request of the United States to examine EC measures affecting the approval and marketing of biotech products. See 69 FR 11,927.

The WTO Panel issued its report on September 29, 2006. The Panel agreed with the United States that the disputed measures of the EC, Austria, France, Germany, Greece, Italy, and Luxembourg are inconsistent with the obligations set out in the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (''SPS Agreement''). In particular:

—The Panel found that the EC adopted a de facto, across-the-board moratorium on the final approval of biotech products, starting in 1999 up through the time the panel was established in August 2003.

—The Panel found that the EC had presented no scientific or regulatory justification for the moratorium, and thus that the moratorium resulted in ''undue delays'' in violation of the EC's obligations under the SPS Agreement.

—The Panel also identified specific, WTO-inconsistent ''undue delays'' with regard to 24 of the 27 pending product applications that were listed in the U.S. panel request.

—The Panel found that the bans adopted by six EC member States on biotech products approved in the EC prior to the moratorium were not supported by scientific evidence and were thus inconsistent with obligations under the SPS Agreement.

The DSB adopted the panel report on November 21, 2006. At the meeting of the DSB held on December 19, 2006, the EC notified the DSB that the EC intended to implement the recommendations and rulings of the DSB in the dispute, and stated that it would need a reasonable period of time for implementation. On June 21, 2007, the United States notified the DSB that it had agreed with the EC on a one-year period of time for implementation, to end on November 21, 2007. The United States subsequently notified the DSB that it had agreed with the EC to extend the implementation period to January 11, 2008.

On January 17, 2008, the United States submitted to the DSB a request for authorization to suspend WTO concessions and other obligations with respect to the EC on an annual basis in an amount equal to the annual level of nullification and impairment resulting from EC non-compliance with DSB recommendations and rulings. Under a sequencing agreement with the EC, that request will be referred to arbitration and the arbitration will be suspended while the United States and EC continue to try to resolve this dispute and related matters. The United States will periodically evaluate EC progress toward normalizing biotech trade against a set of benchmarks and timelines. If the United States decides to pursue WTO proceedings on the EC's compliance, then pursuant to that agreement the United States will file a formal consultation request with the EC, followed by a request for the establishment of a WTO compliance panel. Should the compliance panel find that the EC has not complied with DSB recommendations and rulings, upon request of the United States the arbitration will proceed. Once the arbitrator has issued its award, the United States will be entitled to receive from the DSB the authorization to suspend concessions in accordance with the award.

Procedures for Exercising WTO Authorization To Suspend Trade Concessions

The practice of USTR, in pursuing WTO authorization to suspend trade concessions on particular products, is to publish a broad preliminary product list and ask for public comments on the products to be included on a final retaliation list. This current notice is not intended to replace a notice publishing and seeking comments on a preliminary product list. Rather, the public comments received in response to this current notice will be used as input in the development of a preliminary list of specific products and of specific EC member States. The preliminary list will not necessarily include all products or EC member States suggested in response to this notice, nor will the preliminary list be limited to such products or EC member States.

Public Comment: Requirements for Submissions

To prepare for the possibility that the WTO arbitration is resumed and the DSB authorizes the United States to suspend WTO concessions with respect to the EC, USTR is seeking written comments on action that USTR should take to exercise such an authorization. In particular, USTR seeks written comments with respect to the specific products of the EC or of one or more EC member States, and/or with respect to specific member States of the EC, that should be subject to a suspension of WTO concessions and related obligations, such as through increases of rates of duty above current rates. If commenters suggest suspension of WTO concessions or related obligations with respect to specific products, the comments should identify the specific headings or subheadings of the Harmonized Tariff Schedule of the United States in which such products are classified. Commenters are requested to explain why the suspension with respect to particular products or with respect to particular EC member States would be effective in

terms of encouraging a favorable resolution of the EC-Biotech dispute.

Persons submitting comments may either send one copy by fax to Sandy McKinzy at 202–395–3640, or transmit a copy electronically to *FR0805@ustr.eop.gov,* with ''EC-Biotech Dispute'' in the subject line. For documents sent by fax, USTR requests that the submitter provide a confirmation copy electronically. USTR encourages the submission of documents in Adobe PDF format, as attachments to an electronic mail. Interested persons who make submissions by electronic mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Comments must be in English. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly designated as such and the submission must be marked ''Business Confidential'' at the top and bottom of the cover page and each succeeding page.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must clearly so designate the information or advice;

(2) Must clearly mark the material as ''Submitted in Confidence'' at the top and bottom of the cover page and each succeeding page; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

USTR will maintain a file of non-confidential comments received in response to this notice, accessible to the public, in the USTR Reading Room, which is located at 1724 F Street, NW., Washington, DC 20508. An appointment to review the public file (Docket No. WTO/DS–291) may be made by calling the USTR Reading Room at (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

William Busis,

Chair, Section 301 Committee.

[FR Doc. E8–1143 Filed 1–23–08; 8:45 am]

BILLING CODE 3190–W8–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Rule 19b–7 and Form 19b–7; OMB Control No. 3235–0553; SEC File No. 270–495.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

• (Rule 19b–7 (17 CFR 240.19b–7) and Form 19b–7 (17 CFR 249.822)—Filings with respect to proposed rule changes submitted pursuant to Section 19(b)(7) of the Act.

The Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act'') provides a framework for self-regulation under which various entities involved in the securities business, including national securities exchanges and national securities associations (collectively, self-regulatory organizations or ''SROs''), have primary responsibility for regulating their members or participants. The role of the Commission in this framework is primarily one of oversight: the Exchange Act charges the Commission with supervising the SROs and assuring that each complies with and advances the policies of the Exchange Act.

The Exchange Act was amended by the Commodity Futures Modernization Act of 2000 (''CFMA''). Prior to the CFMA, federal law did not allow the trading of futures on individual stocks or on narrow-based stock indexes (collectively, ''security futures products''). The CFMA removed this restriction and provides that trading in security futures products would be regulated jointly by the Commission and the Commodity Futures Trading Commission.

The Exchange Act requires all SROs to submit to the SEC any proposals to amend, add, or delete any of their rules. Certain entities (Security Futures Product Exchanges) would be national securities exchanges only because they trade security futures products. Similarly, certain entities (Limited Purpose National Securities Associations) would be national securities associations only because their members trade security futures products. The Exchange Act, as amended by the CFMA, established a procedure for Security Futures Product Exchanges and Limited Purpose National Securities Associations to provide notice of proposed rule changes relating to certain matters.[1] Rule 19b–7 and Form 19b–7 implemented this procedure.

The collection of information is designed to provide the Commission with the information necessary to determine, as required by the Exchange Act, whether the proposed rule change is consistent with the Exchange Act and the rules thereunder. The information is used to determine if the proposed rule change should remain in affect or abrogated.

The respondents to the collection of information are SROs. Five respondents file an average total of 12 responses per year. Each response takes approximately 17.25 hours to complete, which corresponds to an estimated annual response burden of 207 (12 responses × 17.25 hours) hours. The average cost per response is $4,607.25 (17.25 hours multiplied by an average hourly rate of $267.09). The resultant total related cost of compliance for these respondents is approximately $55,287 per year (12 responses × $4,607.25 per response).

Compliance with Rule 19b–7 is mandatory. Information received in response to Rule 19b–7 shall not be kept confidential; the information collected is public information.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity

[1] These matters are higher margin levels, fraud or manipulation, recordkeeping, reporting, listing standards, or decimal pricing for security futures products; sales practices for security futures products for persons who effect transactions in security futures products; or rules effectuating the obligation of Security Futures Product Exchanges and Limited Purpose National Securities Associations to enforce the securities laws. *See* 15 U.S.C. 78s(b)(7)(A).

of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Comments should be directed to: R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted within 60 days of this notice.

Dated: January 15, 2008.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–1157 Filed 1–23–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request, copies available from: U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Rule 104: OMB Control No. 3235–0465; SEC File No. 270–411.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

• Rule 104 of Regulation M (17 CFR 242.104)—Stabilizing and Other Activities in Connection with an Offering.

Rule 104 permits stabilizing by a distribution participant during a distribution so long as the distribution participant discloses information to the market and investors. This rule requires disclosure in offering materials of the potential stabilizing transactions and that the distribution participant inform the market when a stabilizing bid is made. It also requires the distribution participants (*i.e.*, the syndicate manager) to maintain information regarding syndicate covering transactions and penalty bids and disclose such information to the SRO.

There are approximately 795 respondents per year that require an aggregate total of 159 hours to comply with this rule. Each respondent makes an estimated 1 annual response. Each response takes approximately 0.20 hours (12 minutes) to complete. Thus, the total compliance burden per year is 159 burden hours. The total compliance cost for the respondents is approximately $8,943.75, resulting in a cost of compliance for the respondent per response of approximately $11.25 (*i.e.*, $8,943.75 / 795 responses).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Comments should be directed to: R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted within 60 days of this notice.

Dated: January 15, 2008.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–1158 Filed 1–23–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Rule 206(3)–3T; SEC File No. 270–571; OMB Control No. 3235–0630.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 350 *et seq.*), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension and approval of the collections of information discussed below.

Temporary rule 206(3)–3T (17 CFR 275.206(3)–3T) under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 *et seq.*) is entitled: ''Temporary rule for principal trades with certain advisory clients.'' The temporary rule provides investment advisers who are registered with the Commission as broker-dealers an alternative means to meet the requirements of section 206(3) of the Advisers Act (15 U.S.C. 80b–6(3)) when they act in a principal capacity in transactions with certain of their advisory clients. The temporary rule, and its attendant paperwork burdens, will expire and no longer be effective on December 31, 2009.

Temporary rule 206(3)–3T permits dually-registered advisers to satisfy the Advisers Act's principal trading restrictions by: (i) Providing written, prospective disclosure regarding the conflicts arising from principal trades; (ii) obtaining written, revocable consent from the client prospectively authorizing the adviser to enter into principal transactions; (iii) making oral or written disclosure and obtaining the client's consent before each principal transaction; (iv) sending to the client confirmation statements disclosing the capacity in which the adviser has acted; and (v) delivering to the client an annual report itemizing the principal transactions.

The Commission staff estimates that approximately 380 investment advisers make use of rule 206(3)–3T, and that on average an investment adviser spends approximately 1,301 hours annually in complying with the requirements of the rule. The Commission staff therefore estimates the total annual burden of the rule's paperwork requirements to be approximately 494,440 hours.

Rule 206(3)–3T does not require recordkeeping or record retention. The collection of information requirements under the rule are required to obtain a benefit. The information collected pursuant to the rule is not required to be filed with the Commission, but rather takes the form of disclosures to, and responses from, clients. Accordingly, these filings are not kept confidential. To the extent advisers include any of the information required by the rule in a filing, such as Form ADV, the information will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of

information unless it displays a currently valid control number.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or e-mail to: *Alexander_T._Hunt@omb.eop.gov*; and (ii) R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: January 14, 2008.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–1159 Filed 1–23–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Rule 101: OMB Control No. 3235–0464; SEC File No. 270–408.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

- (Rule 101 of Regulation M (17 CFR 242.101)—Activities by Distribution Participants

Rule 101 prohibits distribution participants from purchasing activities at specified times during a distribution of securities. Persons otherwise covered by these rules may seek to use several applicable exceptions such as a calculation of the average daily trading volume of the securities in distribution, the maintenance of policies regarding information barriers between their affiliates, and the maintenance of a written policy regarding general compliance with Regulation M for de minimus transactions.

There are approximately 1,634 respondents per year that require an aggregate total of 31,355 hours to comply with this rule. Each respondent makes an estimated 1 annual response. Each response takes approximately 19.19 hours to complete. Thus, the total compliance burden per year is 31,355 burden hours. The total compliance cost for the respondents is approximately $1,763,718.75, resulting in a cost of compliance for the respondent per response of approximately $1,079.39 (*i.e.*, $1,763,718.75/1,634 responses).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Comments should be directed to: R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted within 60 days of this notice.

Dated: January 17, 2008.

Nancy M. Morris,

Secretary.

[FR Doc. E8–1179 Filed 1–23–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57160; File No. SR–Amex–2007–20]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving Proposed Rule Change as Modified by Amendment No. 1 Related to Amending Complex Orders Procedures

January 16, 2008.

I. Introduction

On February 15, 2007, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend complex orders procedures to allow the adjustment of the options leg of the order if market conditions prevent the execution of the non-option leg at the price agreed upon. On November 28, 2007, Amex filed Amendment No. 1 to the proposed rule change. The proposed rule change was published for comment in the **Federal Register** on December 12, 2007.[3] The Commission received no comment letters regarding the proposal. This order approves the proposed rule change, as modified by Amendment No. 1.

II. Description

The Exchange proposes to amend Rule 953–ANTE (b)(ii) to provide that if the stock leg or security futures leg of the order cannot be executed at the price agreed upon due to market conditions, the price of a trade representing the execution of the options leg of the transaction may be adjusted to be consistent with the net debit or credit price of the original order, if market conditions in any of the non-Exchange markets prevent the execution of the non-option leg at the price agreed upon.

In addition, the Commission notes that Amex has represented that the re-pricing of the options leg must be consistent with Amex's priority and parity rules. If the transaction does not satisfy the Exchange's priority and parity rules by the end of the trading day, then the transaction would be cancelled.

III. Discussion

The Commission has carefully reviewed the proposed rule change and the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act [4] and the rules and regulations thereunder applicable to a national securities exchange.[5] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[6] because it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 56901 (December 5, 2007), 72 FR 70625.

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

[5] 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).

[6] 15 U.S.C. 78f(b)(5).

mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the Exchange's proposal to amend its complex order procedures as described above may facilitate the execution of such complex orders.

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Section 6(b)(5) of the Act.[7]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–Amex–2007–20), as modified by Amendment No. 1, is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Nancy M. Morris,

Secretary.

[FR Doc. E8–1177 Filed 1–23–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57161; File No. SR–CBOE–2006–36]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change as Modified by Amendments No. 1 and 2 Thereto Regarding FLEX Equity Option Opening Transactions

January 16, 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 April 14, 2006, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange''), filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by CBOE. On December 24, 2007, the Exchange filed Amendments No. 1 [3] and 2 [4] 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

CBOE proposes to amend its rules regarding the minimum value size for an opening transaction in FLEX Equity Option series on a pilot program basis. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/Legal*), at the Office of the Secretary, CBOE 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, CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the filing is to modify the minimum value size for an opening transaction (other than FLEX Quotes responsive to a FLEX Request for Quotes) in any FLEX Equity Option [5] series in which there is no open interest at the time the Request for Quotes is submitted. Currently, the minimum opening transaction value size in the case of a FLEX Equity Options series is the lesser of (i) 250 contracts or (ii) the number of contracts overlying $1 million in the underlying securities.[6] The Exchange proposes to reduce the ''250 contracts'' component to ''150 contracts;'' the $1 million underlying value component will continue to apply unchanged.[7]

The proposal would become effective on a pilot program basis for a period of 1½ years. If the Exchange were to propose an extension, expansion, or permanent implementation of the program, the Exchange would submit, along with a filing proposing any necessary amendments to the program, a pilot program report. The report would include, for the period during which the program was in effect: (i) Data and analysis on the open interest and trading volume in FLEX Equity Options for which series were opened with a minimum opening size of 150 to 249 contracts and less than $1 million in underlying value; and (ii) analysis on the types of investors that initiated opening FLEX Equity Options transactions (*i.e.*, institutional, high net worth, or retail, if any). The report would be submitted to the Commission at least ninety days prior to the expiration date of the 1½ year pilot program.

The Exchange believes that the reduction of the minimum value size for opening a series in the manner proposed provides FLEX-participating members with greater flexibility in structuring the terms of FLEX Equity Options that best comports with their and their customers' particular needs. The Exchange notes that the opening size requirement for FLEX Equity Options was originally put in place to limit participation in FLEX Equity Options to sophisticated, high net worth investors rather than retail investors.[8] Based on the Exchange's experience to date with such options, it appears that the existing 250 contract component is too large to accommodate the needs of FLEX-participating members and their institutional and high net worth

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[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaced the original filing in its entirety.

[4] Amendment No. 2 replaced Amendment No. 1 in its entirety. The purpose of Amendment 2 was to (i) modify the proposed formula contained in Rule 24A.4 applicable to determining the minimum value size for FLEX Equity Options in new series to change the minimum contract component from the originally proposed 100 contracts to 150 contracts, and make this change applicable on a 1½-year pilot program basis; (ii) propose changes to the formula applicable to determining the minimum value size in currently-opened series; (iii) include corresponding amendments to Rule 24B.4; and (iv) provide additional information in the Purpose section of the filing.

[5] FLEX Equity Options are flexible exchange-traded options contracts which overlie equity securities. FLEX Equity Options provide investors with the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices.

[6] Under this formula, an opening transaction in a FLEX Equity series in a stock priced at $40 or more would reach the $1 million limit before it would reach the contract size limit, *i.e.*, 250 contracts times the multiplier (100) times the stock price ($40) equals $1 million in underlying value. For a FLEX Equity series in a stock priced at less than $40, the 250 contract size limit applies.

[7] Under this proposed formula, an opening transaction in a FLEX Equity series in a stock priced at approximately $66.67 or more would reach the $1 million limit before it would reach the contract size limit, *i.e.*, 150 contracts times the multiplier (100) times the stock price ($66.67) equals just over $1 million in underlying value. For a FLEX Equity series in a stock priced at less than $66.67, the 150 contract size limit would apply.

[8] The existing customer base for FLEX Options includes both institutional investors and high net worth individuals.

customers and thus has become overly restrictive. In particular, the Exchange has recently received numerous requests from broker-dealers representing institutional investors that the minimum value size for opening transactions be reduced.

In proposing the reduction of the 250 contract component to 150 contracts, CBOE is cognizant of the desire to continue to provide the requisite amount of investor protection that the minimum opening size requirement was originally designed to achieve, on the one hand, and the need for market participants to have the flexibility to serve their customers' particular investment needs, on the other hand. As discussed further below, CBOE is also aware of the over-the-counter (''OTC'') market in customized options, which can take on contract characteristics similar to FLEX Options but for which similar opening size restrictions do not apply. In light of these considerations, CBOE believes it is appropriate to modify the FLEX Equity Option minimum opening size requirement in the manner proposed. By reducing the 250 contract component to 150 contracts, the Exchange believes FLEX-participating members could better serve the needs of investors, while maintaining a requirement substantial enough to limit participation to investors who have adequate resources, thereby continuing to provide the requisite amount of investor protection that the opening size requirement was originally designed to achieve. Also, limiting the term of the program to a period of 1½ years would give the Exchange time to consider whether it should request that the program should be extended, expanded, and/or made permanent. If so, CBOE would seek Commission approval.

In further support of its proposal, the Exchange notes that the minimum value size for currently-opened FLEX Equity Option series is already set at 100 contracts, and the minimum size for FLEX Quotes entered in response to a FLEX Request for Quotes is set at 25 contracts (whether in a new series or in a currently-opened series).[9] If FLEX Equity Option transactions can occur in increments of 100 or more contracts in subsequent opening transactions, the Exchange believes it is reasonable to permit the initial series opening transaction size to be 150 contracts (or $1 million in underlying value, whichever is less).

The Exchange also believes that modifying the minimum opening transaction value size in this way will further broaden the base of institutional investors that use FLEX Equity Options to manage their trading and investment risk, including investors that currently trade in the OTC market for customized options which, as indicated above, can take on contract characteristics similar to FLEX Options but for which similar opening size restrictions do not apply. By reducing the minimum opening size requirements for FLEX Equity Options, market participants will have greater flexibility in determining whether to execute their customized options in an exchange environment or in the OTC market. CBOE believes market participants benefit from being able to trade these customized options in an exchange environment in several ways, including, but not limited to, enhanced efficiency in initiating and closing out positions; increased market transparency; and heightened contra-party creditworthiness due to the role of The Options Clearing Corporation as issuer and guarantor of FLEX Options.

Finally, the Exchange is also proposing to modify the minimum value size for an opening transaction in a currently-opened FLEX Equity series (other than FLEX Quotes responsive to a FLEX Request for Quotes). As discussed above, presently, the minimum transaction value size for an opening transaction in a currently-opened series is 100 contracts. The Exchange is proposing to modify the minimum size formula to the lesser of (i) 100 contracts or (ii) the number of contracts overlying $1 million in the underlying securities. This change would only impact those FLEX Equity series in which the underlying stock is trading at $100 or more.[10]

The FLEX minimum size requirements have generally provided that the minimum size for subsequent opening transactions in a currently-opened series is smaller than the minimum size needed to initially open the series. Therefore, Exchange believes that this change is necessary for there to be consistency between the minimum size requirements for new series and currently-opened series when the underlying stock is trading at $100 or more. For example, a new FLEX Equity series in a stock trading at $110 could open with an initial transaction size of 91 contracts, *i.e.*, 91 contracts times the multiplier (100) times the stock price ($110) equals just over $1 million in underlying value. Once the series is opened, absent the proposed change, any further opening transactions would require a minimum contract size of 100 contracts. However, if the initial series opening can occur with a 91 contract transaction, the Exchange believes that it is reasonable to permit the size of subsequent opening transactions in the series to be for 91 contracts.

2. Statutory Basis

By providing FLEX-participating members and their customers greater flexibility to trade FLEX Equity Options by lowering from 250 to 150 the minimum number of contracts required to open a series, 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 should promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, 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 that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal**

[9] Specifically, the minimum value size for a transaction in any currently-opened FLEX Equity Option series is 100 contracts in the case of opening transactions and 25 contracts in the case of closing transactions (or any lesser amount in a closing transaction that represents the remaining underlying size, whichever is less). Additionally, the minimum value size for a FLEX Quote entered in response to a Request for Quotes in FLEX Equity Options is the lesser of 25 contracts or the remaining underlying size in a closing transaction. *See* Exchange Rules 24A.4(a)(4)(iii)–(iv) and 24B.4(a)(5)(iii)–(iv). A ''FLEX Quote'' refers to (i) FLEX bids and offers entered by Market-Makers and (ii) orders to purchase and orders to sell FLEX Options entered by Exchange members other than Market-Makers, in each case in response to a Request for Quotes. *See* CBOE Rules 24A.1(h) and 24B.1(k).

[10] Under this proposed formula, a transaction in a currently-opened FLEX Equity series in a stock priced at $100 or more would reach the $1 million limit before it would reach the contract size limit, *i.e.*, 100 contracts times the multiplier (100) times the stock price ($100) equals $1 million in underlying value.

[11] 15 U.S.C. 78(f)(b).

[12] 15 U.S.C. 78(f)(b)(5).

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 CBOE consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2006–36 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–2006–36. 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–2006–36 and should be submitted on or before February 14, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.

Nancy M. Morris,

Secretary.

[FR Doc. E8–1178 Filed 1–23–08; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57164; File No. SR–FINRA–2007–041]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Amend NASD Rule 7001B To Adjust the Percentage of Market Data Revenue Shared With NASD/Nasdaq TRF Participants

January 17, 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 prepared substantially by FINRA. 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 amend NASD Rule 7001B (Securities Transaction Credit) to modify the percentage of New York Stock Exchange (''Tape A''), American Stock Exchange and regional exchange (''Tape B''), and Nasdaq Exchange (''Tape C'') market data revenue shared with FINRA members reporting trades to the NASD/Nasdaq Trade Reporting Facility (the ''NASD/Nasdaq TRF'').[3] The text of the proposed rule change is available at *http://www.finra.org,* the principal offices of FINRA, 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, 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 these 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 aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

The NASD/Nasdaq TRF provides FINRA members a mechanism for reporting locked-in transactions in exchange-listed securities effected otherwise than on an exchange. In connection with the establishment of the NASD/Nasdaq TRF, FINRA and The Nasdaq Stock Market, Inc. (''Nasdaq'') entered into the Limited Liability Company Agreement of the Trade Reporting Facility LLC (''the NASD/Nasdaq TRF LLC Agreement''), a copy of which appears in the NASD Manual. Under the NASD/Nasdaq TRF LLC Agreement, FINRA, the ''SRO Member,'' has sole regulatory responsibility for the NASD/Nasdaq TRF. Nasdaq, the ''Business Member,'' is primarily responsible for the management of the NASD/Nasdaq TRF's business affairs to the extent those activities are not inconsistent with the regulatory and oversight functions of FINRA. Additionally, the Business Member is obligated to pay the cost of regulation and is entitled to the profits and losses, if any, derived from the operation of the NASD/Nasdaq TRF.

On July 21, 2006, FINRA filed a proposed rule change for immediate effectiveness to adopt a new NASD Rule 7000B Series relating to fees and credits applicable to the NASD/Nasdaq TRF.[4]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Effective July 30, 2007, FINRA was formed through the consolidation of NASD and the member regulatory functions of NYSE Regulation. Accordingly, the NASD/Nasdaq TRF is now doing business as the FINRA/Nasdaq TRF. The formal name change of each Trade Reporting Facility (''TRF'') is pending and once completed, FINRA will file a separate proposed rule change to reflect those changes in the Manual.

[4] *See* Securities Exchange Act Release No. 54353 (August 23, 2006), 71 FR 51255 (August 29, 2006) (SR–NASD–2006–090).

Pursuant to NASD Rule 7001B, FINRA members reporting trades in Tape A, Tape B [5] and Tape C securities to the NASD/Nasdaq TRF currently receive a 50% *pro rata* credit on market data revenue earned by the NASD/Nasdaq TRF. At present, the revenue eligible for sharing is the revenue received by the NASD/Nasdaq TRF from the three tape associations after deducting the amount, if any, that the NASD/Nasdaq TRF pays to the Consolidated Tape Association or the Nasdaq Securities Information Processor for capacity usage.[6]

Proposal to Adjust Securities Transaction Credit

FINRA is proposing to amend Rule 7001B to base the percentage of market data revenue shared with a FINRA member reporting trades to the NASD/Nasdaq TRF on the member's ''Market Share.'' FINRA proposes to define ''Market Share'' in Rule 7001B as the percentage calculated by dividing the total number of shares represented by trades reported by a member to the NASD/Nasdaq TRF during a given calendar quarter by the total number of shares represented by all trades reported to the Consolidated Tape Association or the Nasdaq Securities Information Processor, as applicable, during that quarter. Market Share will be calculated separately for each tape.

Pursuant to the proposed rule change, the percentage of Market Share required to receive particular percentages of revenue will vary among the three tapes. Thus, for example, a member whose trade reports in NYSE-listed stocks constitute 0.25% or more of the total consolidated volume in those stocks would receive 100% of the attributable market data revenue, a member with less than 0.25% but at least 0.15% would receive 80% of the attributable market data revenue, a member with less than 0.15% but at least 0.10% would receive 50%, and a member with less than 0.1% would not be eligible for the market data revenue sharing program. For Tape B stocks, a member whose trade reports constitute 0.5% or more of the total consolidated volume in those stocks would receive 100% of the attributable market data revenue, a member with less than 0.5% but at least 0.25% would receive 80% of the attributable market data revenue, a member with less than 0.25% but at least 0.10% would receive 50%, and a member with less than 0.1% would not be eligible for the program. For Tape C stocks, a member whose trade reports constitute 0.75% or more of the total consolidated volume in those stocks would receive 100% of the attributable market data revenue, a member with less than 0.75% but at least 0.25% would receive 80% of the attributable market data revenue, a member with less than 0.25% but at least 0.10% would receive 50%, and a member with less than 0.1% would not be eligible for the program. According to Nasdaq, as the Business Member under the NASD/Nasdaq TRF LLC Agreement, the different percentages required for different tapes reflect the current extent to which participants use the NASD/Nasdaq TRF to report trades in different stocks, i.e., comparatively higher volumes of trades in Tape C stocks are reported through the NASD/Nasdaq TRF than in Tape B or Tape A stocks, and thus for Tape C, the levels of revenue sharing are tied to higher market share levels.

As the Business Member, Nasdaq has determined that the proposed changes in the percentage of market data revenue shared with NASD/Nasdaq TRF participants may be necessary for competitive reasons. FINRA recently filed proposed rule changes to share 100% and 75% of the revenues paid with respect to trades reported to the NASD/NYSE TRF and the NASD/NSX TRF, respectively.[7] Nasdaq believes that market data revenue associated with over-the-counter trade reporting should continue to serve its traditional function of defraying at least a portion of the regulatory costs associated with the activity and is reluctant to impose the regulatory costs of the NASD/Nasdaq TRF exclusively on customers that lack a nexus to its operations. Even with 50% revenue sharing, however, the amount of remaining market data revenue is not sufficient to defray the regulatory costs of the NASD/Nasdaq TRF. Without a significant pricing change, Nasdaq believes that the NASD/Nasdaq TRF would have greater difficulty competing. Nasdaq believes that the proposed tiered revenue sharing program, in which market participants that make the most use of the NASD/Nasdaq TRF are eligible for the highest level of revenue sharing with others receiving progressively lower percentages, will allow the NASD/Nasdaq TRF to remain competitive while still funding a portion of its regulatory costs out of market data revenue. Nevertheless, Nasdaq will be required to fund a portion of the regulatory costs associated with the NASD/Nasdaq TRF from Nasdaq's general revenues.

FINRA is proposing that the implementation date of the proposed rule change shall be retroactive to January 1, 2008.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[8] in general, and with Section 15A(b)(5) of the Act,[9] in particular, which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls. FINRA believes that the proposed rule change is a reasonable and equitable credit structure in that it bases the percentage of revenue shared on members' respective contributions to the revenues of the NASD/Nasdaq TRF, and further Nasdaq has indicated that all regulatory costs owed by Nasdaq as the Business Member related to the NASD/Nasdaq TRF that are not funded out of market data revenue or trade reporting fees will be funded by Nasdaq general revenues.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal**

[5] The proposed rule change would clarify an ambiguity in the current rule. Both Rule 7001B and the predecessor rule in effect prior to Nasdaq's separation from FINRA referred to ''Amex'' and ''Tape B'' as synonymous, but in fact the Tape B revenue sharing program has always been interpreted to include stocks listed on regional exchanges, such as NYSE Arca, because transactions in such stocks are reported to Tape B.

This ambiguity also exists in the market data revenue sharing rules relating to the other TRFs, which FINRA will propose to clarify in a separate filing.

[6] The proposed rule change would eliminate the deduction for capacity usage. Nasdaq, as the Business Member, believes that the amount of the deduction is small and needlessly complicates the administration of the revenue sharing program.

[7] *See* Securities Exchange Act Release No. 56754 (November 6, 2007), 72 FR 64101 (November 14, 2007) (SR–NASD–2007–031); Securities Exchange Act Release No. 56752 (November 6, 2007), 72 FR 64099 (November 14, 2007) (SR–NASD–2007–043).

[8] 15 U.S.C. 78o–3.

[9] 15 U.S.C. 78o–3(b)(5).

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 FINRA consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2007–041 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2007–041. 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 publicly available. All submissions should refer to File Number SR–FINRA–2007–041 and should be submitted on or before February 14, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–1156 Filed 1–23–08; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57163; File No. SR–OCC–2007–18]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to Expiration Date Exercise Procedure

January 16, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on December 7, 2007, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I and II below, which items have been prepared primarily by OCC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval to the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would reduce the threshold amounts used to determine the equity options that are deemed to be in the money for purposes of exercise by exception processing.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

OCC is proposing to amend Rule 805, which prescribes expiration date exercise procedures including exercise by exception processing, to reduce from $.05 to $.01 the threshold amount used to determine the equity options that are deemed to be in the money for purposes of exercise by exception processing.[3]

(1) Background

OCC has for years maintained an ''exercise by exception'' procedure. Under that procedure, options that are in the money at expiration by more than a specified threshold amount are exercised automatically unless the clearing member carrying the position instructs otherwise. Equity options are determined to be in the money or not based on the difference between the exercise price and the closing price of the underlying equity interest on the last trading day before expiration. In each of the last two years, OCC has reduced the threshold amounts for equity options in order to streamline expiration processing.[4] These changes were implemented at the request of the OCC Roundtable[5] and benefited both OCC and clearing members by reducing the time required for the submission of exercise instructions on an average expiration weekend.

(2) Discussion

In view of the high options volumes experienced in 2007, the OCC Roundtable once again recommended that OCC decrease the threshold applicable to equity options in an effort to continue to improve expiration

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[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by OCC.

[3] A conforming change is also being made to Rule 1106, which concerns the treatment of open positions following the suspension of a clearing member.

[4] In September, 2005, the threshold was reduced from $.75 to $.25 for equity options in a clearing member's customers' account and from $.25 to $.15 for equity options in any other account (*i.e.*, firm and market makers' accounts). Securities Exchange Act Release No. 50178 (August 10, 2004), 69 FR 51343 (August 18, 2004) [File No. SR–OCC–2004–04]. In October, 2006, the threshold became $.05 for equity options in all account types. Securities Exchange Act Release No. 54514 (September 26, 2006), 71 FR 58656 (October 4, 2006) [File No. SR–OCC–2006–05].

[5] OCC's Roundtable is an OCC sponsored advisory group comprised of representatives from OCC's participant exchanges, OCC, a cross-section of OCC clearing members, and industry service bureaus. The Roundtable considers operational improvements that may be made to increase efficiencies and lower costs in the options industry.

processing and to reducing operational risks. The Roundtable suggested $.01 as the new threshold for all accounts.

As with the other proposed threshold reductions, OCC conducted a survey of its clearing membership to assess support for the change. Survey results reflected strong support for the change across the membership.[6] Seventy-nine clearing members responded to the survey with 69 clearing members in favor of the threshold change and 10 clearing members opposed. Clearing members supporting the change confirmed the Roundtable's view that it would significantly reduce the number of instructions they are required to input on expiration and thereby shorten the timeframe for completing instructions to OCC.

OCC contacted each clearing member that opposed the threshold change, generally mid-size to small retail clearing members. Their principal concern was that the lowered threshold would require them to input more ''do not exercise'' instructions although some indicated concerns about the need to educate customers and the possibility that commission costs could make an exercise unprofitable.[7] For approximately half of the 10 clearing members opposed to the change, expiration exercise reports for the first eight months of 2007 reflected that there were about 20 to 70 line items of positions that were in the money but not exercised because the in the money amount was less than the current threshold level.[8] As a result, OCC believes these clearing members would most likely have to input more ''do not exercise'' instructions. The remaining clearing members carried positions in fewer than ten expiring series that were in the money by less than the current threshold, leading OCC to conclude that these clearing members would have a negligible increase in processing time for submitting instructions not to exercise. All clearing members, however, agreed that they could adapt to the change if supported by the majority of clearing members.

After carefully considering clearing member views on the threshold change, OCC has concluded that a $.01 threshold will generally benefit the majority of clearing members and will further improve expiration processing. OCC will modify its clearing system to provide increased functionality in order to lessen the operational burden that may be experienced by the clearing members needing to submit additional ''do not exercise'' instructions as a result of changing the threshold.

The clearing member survey also asked firms to provide an estimate of the time needed to accommodate the threshold change based upon supplied time frames (*i.e.*, 0–3 months or 4–6 months). The majority of clearing members indicated that they could complete the necessary systems development and customer notifications within six months. OCC contacted every clearing member that commented on the proposed timeframes, and all expressed the view that their efforts would be completed in the six month time period.

The Roundtable has asked that this change be implemented no later than the June 2008 expiration. OCC therefore requests the Commission to approve this rule filing no later than January 31, 2008, in order for OCC to provide sufficient advance notice to clearing members that it has been approved for implementation. OCC further requests that it be authorized to implement the threshold change thereafter based upon its assessment of clearing member readiness. OCC will provide at least ten days advance notice to clearing members of the effective date of the new threshold amounts. Such notice will be provided through information memoranda and other forms of electronic notice such as email.

OCC believes that the proposed rule change is consistent with Section 17A of the Act because it facilitates the prompt and accurate processing of exercise information on expiration.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.[9] OCC Rule 805 is based on the assumption that when an option is in-the-money by at least a minimum fixed threshold level, most OCC members and their customers would choose to exercise the option. The rule has the effect, therefore, of reducing the number of exercise instructions that must be submitted to and processed by OCC. As OCC notes in its description of the proposed rule change, if a threshold amount is set too low, the result could be that some members would have to submit a greater number of ''do not exercise'' instructions than they would have to submit if the threshold amount was set at a higher amount. However, the Commission is satisfied that by consulting with an industry advisory group, by surveying its clearing members, and by its analysis, OCC has made a reasoned determination in deciding to set the threshold amount for equity options in all account types at $.01. Furthermore, we note that OCC indicated that it would modify its clearing system to provide increase functionality in order to lessen the operational burden on clearing members that experience increased ''do not exercise'' instructions as a result of the new threshold amount. Accordingly, because the proposed rule change is designed to reduce the amount of processing required for in-the-money equity options, we find that it is designed to promote the prompt and accurate clearance and settlement of securities transactions.

OCC has requested that the Commission approve the proposed rule at least six months prior to the June 2008 expiration. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after publication of notice because such approval will allow OCC to give its clearing members sufficient time to complete the necessary system developments and customer notifications before OCC's scheduled implementation for the June 2008 expiration.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing,

[6] OCC also contacted clearing members that did not respond to its survey. These clearing members expressed no opinion on the matter.

[7] As noted, clearing members are able to instruct OCC not to exercise an expiring equity option even though the option is in the money by more than the exercise by exception threshold. Clearing members could, for example, choose not to exercise an expiring equity option that is in the money where the in the money amount is less than the applicable commission costs.

[8] OCC continually reviews expiration exercise reports of clearing members to monitor exercise activity. The referenced information, which remained consistent across expirations during this period and thereafter was obtained in the course of performing such reviews.

[9] 15 U.S.C. 78q–1(b)(3)(F).

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–OCC–2007–18 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–OCC–2007–18. 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 OCC and on OCC's Web site at *http://www.theocc.com/publications/rules/proposed_changes/sr_occ_07_18.pdf*. 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–OCC–2007–18 and should be submitted on or before February 14, 2008.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.[10]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–2007–18) be and hereby is approved.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–1155 Filed 1–23–08; 8:45 am]

BILLING CODE 8011–01–P

[10] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[11] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11154 and #11155]

Mississippi Disaster # MS–00014

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Mississippi dated 01/16/2008.

Incident: Severe Storms And Tornadoes.

Incident Period: 01/10/2008.

Effective Date: 01/16/2008.

Physical Loan Application Deadline Date: 03/17/2008.

Economic Injury (EIDL) Loan Application Deadline Date: 10/16/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Holmes and Lowndes.

Contiguous Counties:

Mississippi: Attala, Carroll, Clay, Humphreys, Leflore, Madison, Monroe, Noxubee, Oktibbeha, and Yazoo.

Alabama: Lamar and Pickens.

The Interest Rates are:

	Percent
Homeowners With Credit Available Elsewhere	5.875
Homeowners Without Credit Available Elsewhere	2.937
Businesses With Credit Available Elsewhere	8.000
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	5.250
Businesses And Non-Profit Organizations Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 11154 C and for economic injury is 11155 0.

The States which received EIDL Declaration # are Mississippi and Alabama.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Steven C. Preston,

Administrator.

[FR Doc. E8–1218 Filed 1–23–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11145]

Missouri Disaster Number MO–00019

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Missouri (FEMA–1736–DR), dated 12/27/2007.

Incident: Severe Winter Storms.

Incident Period: 12/06/2007 through 12/15/2007.

DATES: *Effective Date:* 12/15/2007.

Physical Loan Application Deadline Date: 02/25/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit

organizations in the State of Missouri, dated 12/27/2007, is hereby amended to establish the incident period for this disaster as beginning 12/06/2007 and continuing through 12/15/2007.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E8–1125 Filed 1–23–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11156]

Nebraska Disaster #NE–00018

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Nebraska (FEMA–1739–DR), dated 01/11/2008.

Incident: Severe Winter Storm.

Incident Period: 12/10/2007 through 12/12/2007.

DATES: *Effective Date:* 01/11/2008.

Physical Loan Application Deadline Date: 03/11/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 01/11/2008, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Gage, Jefferson, Johnson, Nemaha, Otoe, Pawnee, Richardson, Thayer.

The Interest Rates are:

	Percent
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	5.250
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 11156.

(Catalog of Federal Domestic Assistance Number 59008)

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E8–1127 Filed 1–23–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11148 and #11149]

Nevada Disaster Number NV–00008

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Nevada (FEMA–1738–DR), dated 01/08/2008.

Incident: Severe Winter Storms and Flooding.

Incident Period: 01/05/2008 and continuing through 01/10/2008.

Effective Date: 01/10/2008.

Physical Loan Application Deadline Date: 03/10/2008.

Economic Injury (EIDL) Loan Application Deadline Date: 10/08/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of Nevada, dated 01/08/2008 is hereby amended to establish the incident period for this disaster as beginning 01/05/2008 and continuing through 01/10/2008.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008).

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E8–1216 Filed 1–23–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11124 and #11125]

Washington Disaster Number WA–00015

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 5.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Washington (FEMA–1734–DR), dated 12/09/2007.

Incident: Severe Storms, Flooding, Landslides, and Mudslides.

Incident Period: 12/01/2007 through 12/17/2007.

DATES: *Effective Date:* 01/09/2008.

Physical Loan Application Deadline Date: 02/07/2008.

EIDL Loan Application Deadline Date: 09/09/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW, Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Washington, dated 12/09/2007 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties:

Wahkiakum.

Contiguous Counties:

Oregon: Clatsop, Columbia.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E8–1126 Filed 1–23–08; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 6067]

Notice of Receipt of Application for a Presidential Permit To Construct, Operate, and Maintain a New Border Crossing Facility on the U.S.-Mexico Border at San Diego, CA and Tijuana, Baja California, Mexico

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Department of State hereby gives notice that, on January 14, 2008, it received an application for a Presidential Permit to authorize the construction, operation, and maintenance of a new border crossing facility on the U.S.-Mexico border at San Diego, California and Tijuana, Baja California, Mexico. The new crossing would be approximately two miles east of the current Otay Mesa port of entry, and would connect to existing roads via a proposed new State highway. The California Department of Transportation (''Caltrans''), a branch of the California State government, filed this application and is acting as the project's sponsor. The Department of State's jurisdiction over this application is based upon Executive Order 11423 of August 16, 1968, as amended. As provided in E.O. 11423, the Department is circulating this application to relevant Federal and State agencies for review and comment. Under E.O. 11423, the Department has the responsibility to determine, taking into account input from these agencies and other stakeholders, whether this proposed border crossing is in the U.S. national interest.

DATES: Interested members of the public are invited to submit written comments regarding this application on or before April 23, 2008 to Mr. Daniel Darrach, U.S.-Mexico Border Affairs Coordinator, via e-mail at *WHA-BorderAffairs@state.gov* or by mail at WHA/MEX—Room 4258, Department of State, 2201 C St., NW., Washington, DC 20520.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel Darrach, U.S.-Mexico Border Affairs Coordinator, via e-mail at *WHA-BorderAffairs@state.gov*; by phone at 202–647–9894; or by mail at WHA/MEX—Room 4258, Department of State, 2201 C St., NW., Washington, DC 20520. General information about Presidential Permits is available on the Internet at *http://www.state.gov/p/wha/rt/permit/*.

SUPPLEMENTARY INFORMATION: This application and related environmental assessment documents are available for review in the Office of Mexican Affairs, Border Affairs Unit, Department of State, during normal business hours.

Dated: January 17, 2008.

John Dickson,

Director, Office of Mexican Affairs, Department of State.

[FR Doc. E8–1217 Filed 1–23–08; 8:45 am]

BILLING CODE 4710–29–P

DEPARTMENT OF STATE

[Public Notice 6069]

Culturally Significant Object Imported for Exhibition Determinations: ''Khatchkar of Lori''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the object ''Khatchkar of Lori'', imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit object at The Metropolitan Museum of Art, New York, New York, from on or about September 15, 2008, until on or about February 15, 2009, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, Wolodymyr Sulzynsky, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: January 17, 2008.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E8–1204 Filed 1–23–08; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 6068]

Culturally Significant Objects Imported for Exhibition Determinations: Rococo: The Continuing Curve, 1730–2008

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects in the exhibition ''Rococo: The Continuing Curve, 1730–2008, imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit objects at the Cooper-Hewitt, National Design Museum, Smithsonian Institution, New York, NY, from on or about March 7, 2008, until on or about July 7, 2008, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: January 16, 2008.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E8–1201 Filed 1–23–08; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 6070]

Culturally Significant Objects Imported for Exhibition Determinations: ''Works by Frans Hals and Philips Wouwerman''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the works by Frans Hals and Philips Wouwerman, imported from abroad for temporary

exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the J. Paul Getty Museum, Los Angeles, CA, from on or about February 4, 2008, until on or about May 25, 2010, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Richard Lahne, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8058). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: January 16, 2008.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E8–1203 Filed 1–23–08; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

[Docket No. OST–2007–27407

National Surface Transportation Infrastructure Financing Commission

AGENCY: Department of Transportation (DOT).

ACTION: Notice of meeting location and time.

SUMMARY: This notice lists the location and time of the eighth meeting of the National Surface Transportation Infrastructure Financing Commission.

FOR FURTHER INFORMATION CONTACT: John V. Wells, Chief Economist, U.S. Department of Transportation, (202) 366–9224, *jack.wells@dot.gov.*

SUPPLEMENTARY INFORMATION: By **Federal Register** Notice dated March 12, 2007, and in accordance with the requirements of the Federal Advisory Committee Act (''FACA'') (5 U.S.C. App. 2) and the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (''SAFETEA–LU'') (Pub. L. 109–59, 119 Stat. 1144), the U.S. Department of Transportation (the ''Department'') issued a notice of intent to form the National Surface Transportation Infrastructure Financing Commission (the ''Financing Commission''.) Section 11142(a) of SAFETEA–LU established the National Surface Transportation Infrastructure Financing Commission and charged it with analyzing the future highway and transit needs and the finances of the Highway Trust Fund and with making recommendations regarding alternative approaches to financing transportation infrastructure.

Notice of Meeting Location and Time: The Commissioners have agreed to hold their eighth meeting from 8:30 a.m. to 4 p.m. on Tuesday, February 12, 2008. The meeting will be open to the public and is scheduled to take place at the APS Corporate Office, Two Arizona Center, 400 N. 5th Street, Phoenix, Arizona 85004, in Conference Room CHQ2 South.

If you need accommodations because of a disability or require additional information to attend these meetings, please contact John V. Wells, Chief Economist, U.S. Department of Transportation, (202) 366–9224, *jack.wells@dot.gov*.

Issued on this 10th day of January, 2008.

John V. Wells,

Chief Economist, U.S. Department of Transportation, Designated Federal Official.

[FR Doc. 08–263 Filed 1–23–08; 8:45 am]

BILLING CODE 4910–9X–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

FAA (Aircraft Certification Service) ''Meet the Regulators'' Information Sharing and Listening Session

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting to discuss various FAA rotorcraft safety initiatives and to gather any relevant information that will help to reduce general aviation rotorcraft accidents.

DATES: The meeting will be on February 26, 2008, 10 a.m.–12 noon CST.

ADDRESSES: The meeting is in conjunction with Heli-Expo at the George Brown Convention Center, Room 350 (A, B, D, and E), 1001 Avendia de las Americas, Houston, Texas.

FOR FURTHER INFORMATION CONTACT: Jorge Castillo, Safety Management Group, ASW–112, 2601 Meacham Boulevard, Fort Worth, TX 76137, telephone (817) 222–5112, or by e-mail at *Jorge.R.Castillo@faa.gov.*

SUPPLEMENTARY INFORMATION: The meeting is announced pursuant to 49 U.S.C. 40113 and 49 U.S.C. 44701 to take actions the FAA considers necessary in order to enhance safety in air commerce and the DOT policies and procedures to seek public participation in that process.

This meeting is part of the Rotorcraft Directorate's initiative and supports one of the top safety objectives of the FAA Flight Plan to reduce the number of fatal accidents in general aviation. At this meeting, we will brief attendees on some of the FAA's initiatives intended to reduce rotorcraft accidents, including rotorcraft accident prevention outreach programs and the use of Night Vision Imaging Systems (NVIS). You will have an opportunity to propose safety-enhancing recommendations and to recommend how the FAA should implement strategies that will help reduce rotorcraft accidents. Attendance is open to all interested persons, but will be limited to the space available.

Issued in Fort Worth, Texas, on January 15, 2008.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. E8–1227 Filed 1–23–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Mariposa County, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA, on behalf of the California Department of Transportation (Caltrans), is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for a proposed highway project in Mariposa County, California.

FOR FURTHER INFORMATION CONTACT: Juergen Vespermann, Chief, San Joaquin Valley Environmental Analysis Branch, Caltrans, 2015 East Shields Avenue, Suite 100, Fresno CA, 93726, E-mail at *juergen_vespermann@dot.ca.gov*, telephone at (559) 243–8157.

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, the FHWA assigned, and Caltrans assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Caltrans will prepare an EIS on a proposal for reopening and restoring full access to the section of State Route 140 damaged by the Ferguson rockslide in Mariposa County, California. The project is located on State Route 140 from 8 miles east of Briceburg, post mile 42.0, to approximately 7.6 miles west of El

Portal, post mile 42.7 in Mariposa County, California. The total length of the project is 0.7 mile. This project is proposing the following build alternatives:

- Alternative C (Open-Cut Realignment) would realign the highway to the northeast, spanning the Merced River and bypassing the rockslide. State Route 140 would cut through the mountain across from the rockslide and then span back across the river where it would meet the existing alignment. Two bridges would be constructed to cross the river.
- Alternative T (Tunnel Realignment) would realign the highway to the northeast, spanning the Merced River and bypassing the rockslide. State Route 140 would tunnel 725 feet through the mountain across from the rockslide and then span back across the river where it would meet the existing alignment. Two bridges would be constructed to cross the river.
- Alternative S (Viaduct Realignment) would realign the highway to the northeast, spanning the Merced River with two bridges and bypassing the rockslide with a hillside viaduct and retaining wall.
- No-Build Alternative would leave State Route 140 damaged and blocked by the Ferguson rockslide. As a result of the No-Build Alternative, the temporary detour would become the permanent State Route 140 alignment. The current vehicle length restrictions would remain in place along with the traffic signals controlling the single-lane access through the detour. The structures for the temporary detour were constructed during a declared emergency and were designed as a temporary solution to the closure of State Route 140. These structures would not meet standard design features nor would the detour meet the purpose and need of the project.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, Participating Agencies, the American Indian Council of Mariposa County, the Yosemite-Mono Lake Paiute Indian Community and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. Public hearings will be held in Mariposa and El Portal, California. Public notice will be given of the time and place of the hearings. The draft EIS will be available for public and agency review and comment prior to the public hearings. An Environmental Assessment was prepared and then circulated for agency and public review on November 19, 2007. The circulation period was a 45-day review that ended on January 3, 2008. Based on agency and public comments, Caltrans has decided to begin the preparation of an EIS. Scoping meetings and hearings were previously held during May, June, and November of 2007. The meetings and hearings were held at Mariposa and El Portal, California.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to Caltrans at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: January 16, 2008.

Nancy Bobb,

Director, State Programs, Federal Highway Administration, Sacramento, California.

[FR Doc. E8–1142 Filed 1–23–08; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA–2008–0010]

Reports, Forms, and Recordkeeping Requirements

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

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes a previously approved collection of information for which NHTSA intends to seek OMB approval for an extension.

DATES: Comments must be received on or before March 24, 2008.

ADDRESSES: You may submit comments [identified by DOT Docket No. NHTSA–2008–0010] by any of the following methods:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- Mail: Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- Hand Delivery or Courier: West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays. Telephone: 1–800–647–5527.
- Fax: 202–493–2251.

Instructions: All submissions must include the agency name and docket number for this proposed collection of information. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://DocketInfo.dot.gov*.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: Walter Culbreath at the National Highway Traffic Safety Administration, Office of the Chief Information Officer, Room W51–204, 1200 New Jersey Avenue, SW., Washington, DC 20590. Mr. Culbreath's telephone number is (202) 366–1566. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations

describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected;

(iv) How to minimize the burden of the collection of information on those who are to respond including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collection of information.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: Generic Clearance for Customer Surveys.

OMB Number: 2127–0579.

Type of Request: Extension of a currently approved information collection.

Abstract: Executive Order 12862 mandates that agencies survey their customers to identify the kind and quality of services they want and their level of satisfaction with existing services. Other requirements include the Governmental Performance and Results Act (GPRA) of 1993 which promotes a new focus on results, service quality, and customer satisfaction. NHTSA will use surveys of the public and other external stakeholders to gather data as one input to decisionmaking on how better to meet the goal of improving safety on the nation's highways. The data gathered on public expectations, NHTSA's products and services, along with specific information on transportation safety, will be used by the agency as input to structure its processes and products, forecast safety trends and achieve the agency's goals.

Affected Public: Individuals or households are primary survey respondents. Business or other for-profit, not-for-profit institutions, Federal agencies, and State, local or tribal governments are other possible survey respondents.

Estimated Total Annual Burden: 13,468.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued on: January 17, 2008.

Margaret O'Brien,

Chief Information Officer.

[FR Doc. E8–1131 Filed 1–23–08; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption From the Vehicle Theft Prevention Standard; Hyundai-Kia America Technical Center, Inc.

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

ACTION: Grant of petition for exemption.

SUMMARY: This document grants in full the petition of Hyundai-Kia Motors Corporation (Hyundai) in accordance with § 543.9(c)(2) of 49 CFR Part 543, *Exemption from the Theft Prevention Standard*, for the Hyundai Genesis vehicle line beginning with model year (MY) 2009. This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard. Hyundai requested confidential treatment for its information and attachments submitted in support of its petition. The agency will address Hyundai's request for confidential treatment in a separate letter.

DATES: The exemption granted by this notice is effective beginning with model year (MY) 2009.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Mazyck, International Policy, Fuel Economy and Consumer Programs, NHTSA, 1200 New Jersey Avenue, SE., Washington, DC 20590. Ms. Mazyck's telephone number is (202) 366–0846. Her fax number is (202) 493–2290.

SUPPLEMENTARY INFORMATION: In a petition dated October 22, 2007, Hyundai-Kia America Technical Center, Inc., on behalf of Hyundai-Kia Motors (Hyundai) requested an exemption from the parts-marking requirements of the Theft Prevention Standard (49 CFR Part 541) for the Hyundai Genesis vehicle line beginning with MY 2009. The petition requested an exemption from parts-marking pursuant to 49 CFR Part 543, *Exemption from Vehicle Theft Prevention Standard,* based on the installation of an antitheft device as standard equipment for an entire vehicle line.

Under § 543.5(a), a manufacturer may petition NHTSA to grant an exemption for one of its vehicle lines per year. Hyundai has petitioned the agency to grant an exemption for its Genesis vehicle line beginning with MY 2009. In its petition, Hyundai provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for the Genesis vehicle line. Hyundai will install its passive antitheft device as standard equipment on the vehicle line. Features of the antitheft device will include a passive immobilizer consisting of an EMS (engine control unit), SMARTRA 3 (immobilizer unit), an antenna coil and transponder ignition keys. Additionally, the Hyundai Genesis will have a standard alarm system which will monitor all the doors, the trunk and the hood of the vehicle. The audible and visual alarms are activated when an unauthorized person attempts to enter or move the vehicle by unauthorized means. Hyundai's submission is considered a complete petition as required by 49 CFR 543.7, in that it meets the general requirements contained in § 543.5 and the specific content requirements of § 543.6.

The antitheft device to be installed on the MY 2009 Hyundai is a transponder-based electronic immobilizer system. The vehicle immobilizer device consists of the EMS, the SMARTRA 3 and ignition keys with a built-in transponder. Hyundai stated that the EMS carries out the check of the ignition key by special encryption algorithm which runs in the transponder and in the EMS in parallel. The engine can only be started if the results of the ignition key check and algorithm are equal.

Hyundai stated that the device is automatically activated by removing the key from the ignition switch and locking the vehicle door. In order to arm the device, the key must be removed from

the ignition switch, all of the doors and hood must be closed and the driver's door must be locked with the ignition key or all doors must be locked with the keyless entry. When the device is armed, the visual (flashing hazard lamps) and audible (horn sound) alarm system will be triggered if unauthorized entry is attempted through the doors, trunk or the hood. The device is disarmed when the driver's door is unlocked with the transponder key or keyless entry.

Hyundai stated that its antitheft device has been installed as standard equipment on the Hyundai Azera which was previously approved for exemption from Part 541. There is currently no available theft rate data for Hyundai vehicle lines that have been installed with similar devices. However, Hyundai submitted data on the effectiveness of various antitheft devices to support its belief that its device will be at least effective as comparable devices installed on other vehicle lines previously granted exemptions by the agency. Hyundai further stated that it believes that the General Motors, Ford and Isuzu devices contain components that are functionally and operationally similar to its device. Hyundai also stated that the theft data from the National Crime Information Center (NCIC) show a clear reduction in vehicle thefts after the introduction of the GM and Ford devices. Therefore, Hyundai believes that its device will be at least as effective as those devices that have been installed on lines previously granted exemptions by the agency. Hyundai provided theft rate data for the Chevrolet Camaro and Pontiac Firebird vehicle lines showing a substantial reduction in theft rates comparing the lines between pre- and post introduction of the Pass-Key device. Hyundai also provided ''percent reduction'' data for theft rates between pre- and post-production years for the Ford Taurus and Mustang, and Oldsmobile Toronado and Riviera vehicle lines normalized to the three-year average of the Camaro and Firebird pre-introduction data. Hyundai stated that the data shows a dramatic reduction of theft rates due to the introduction of devices substantially similar to the Hyundai immobilizer device. Specifically, the Taurus, Mustang, Riviera and Toronado vehicle lines showed a 63, 70, 80 and 58 percent theft rate reduction respectively between pre- and post-introduction of immobilizer devices as standard equipment on these vehicle lines.

In addressing the specific content requirements of 543.6, Hyundai provided information on the reliability and durability of its proposed device. To ensure reliability and durability of the device, Hyundai conducted tests based on its own specified standards. Hyundai also provided a detailed list of the tests conducted and believes that the device is reliable and durable since the device complied with its specified requirements for each test.

Based on the evidence submitted by Hyundai, the agency believes that the antitheft device for the Genesis vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR Part 541). Based on the information Hyundai provided about its device, the agency concludes that the device will provide the five types of performance listed in § 543.6(a)(3): Promoting activation; attracting attention to the efforts of unauthorized persons to enter or operate a vehicle by means other than a key; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

As required by 49 U.S.C. 33106 and 49 CFR 543.6(a)(4) and (5), the agency finds that Hyundai has provided adequate reasons for its belief that the antitheft device will reduce and deter theft.

For the foregoing reasons, the agency hereby grants in full Hyundai's petition for exemption for the Genesis vehicle line from the parts-marking requirements of 49 CFR Part 541. The agency notes that 49 CFR Part 541, Appendix A–1, identifies those lines that are exempted from the Theft Prevention Standard for a given model year. 49 CFR Part 543.7(f) contains publication requirements incident to the disposition of all Part 543 petitions. Advanced listing, including the release of future product nameplates, the beginning model year for which the petition is granted and a general description of the antitheft device is necessary in order to notify law enforcement agencies of new vehicle lines exempted from the parts-marking requirements of the Theft Prevention Standard.

If Hyundai decides not to use the exemption for this line, it must formally notify the agency. If such a decision is made, the line must be fully marked according to the requirements under 49 CFR Parts 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if Hyundai wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Part 543.7(d) states that a Part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the anti-theft device on which the line's exemption is based. Further, Part 543.9(c)(2) provides for the submission of petitions ''to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption.''

The agency wishes to minimize the administrative burden that Part 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting Part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis*. Therefore, NHTSA suggests that if the manufacturer contemplates making any changes, the effects of which might be characterized as *de minimis*, it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: January 17, 2008.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. E8–1141 Filed 1–23–08; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORATION

Pipeline and Hazardous Materials Safety Administration, Office of Hazardous Materials Safety Notice of Application for Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of Applications for Special Permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before February 25, 2008.

ADDRESSES COMMENTS TO: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue, SE., Washington, DC or at *http://dms.dot.gov.*

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on January 14, 2008.

Delmer F. Billings,

Director, Office of Hazardous Materials, Special Permits and Approvals.

NEW SPECIAL PERMITS

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permits thereof
14624–N		INOCOM Inc., Dalsung-gun, Daegu.	49 CFR 173.302a, 173.304a and 180.205.	To authorize the manufacture, marking, sale and use of non-DOT specification fiber reinforced plastic (FRP) full composite (FC) cylinders for the transportation in commerce of certain Division 2.1 and 2.2 compressed gases. (modes 1, 2, 3, 4, 5).
14625–N		Sun & Skin Care Research, Inc., Cocoa, FL.	49 CFR 173.306(a)(3)(v)	To authorize the transportation in commerce of an aerosol in certain non-refillable containers which have been tested by an alternative method in lieu of the hot water bath test. (modes 1, 2, 3, 4, 5).
14626–N		Aerojet, Sacramento, CA.	49 CFR 173.56, 173.60 and 173.62.	To authorize the one-time, one-way transportation in commerce of a Class 1 explosive contained in a solid rocket motor in alternative packaging. (mode 1).
14627–N		American Spraytech, North Branch, NJ.	49 CFR 173.306(a)(3)(v)	To authorize the transportation in commerce of certain aerosols containing a Division 2.2 compressed gas in certain non-refillable aerosol containers which are not subject to the hot water bath test. (mode 1).
14628–N		National Aeronautics and Space Administration.	49 CFR 173.301(f) and 173.302a(a).	To authorize the transportation in commerce of certain non-DOT specification pressure vessels containing compressed hydrogen, which are component parts of a nickel-hydrogen battery. (mode 1).
14629–N		Eastman Chemical Company, Kingsport, TN.	49 CFR 173.31, 174.50 and 179.200–16.	To authorize the filling and transportation of certain railcars having broken or unused magnetic gauging devices (MGDs) without first obtaining a specific FRA Movement Approval for each railcar or conducting the repair on site. (mode 2).
14630–N		Dow Agrosciences LLC, Indianapolis, IN.	49 CFR 172.302(a); 172.504(a)	To authorize the transportation in commerce of Division 6.1 liquid fumigants in non-DOT specification cargo tanks equipped with an alternative pressure relief system. (mode 1).
14631–N		iSi Automotive GmbH, Austria.	49 CFR 173.301, 173.302a and 173.305.	To authorize the manufacture, marking, sale and use of non-DOT specification cylinders for certain hazardous materials for use as components of safety systems. (mode 1, 2, 3, 4, 5).

[FR Doc. 08–248 Filed 1–23–08; 8:45 am]

BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration, Office of Hazardous Materials Safety

Notice of Applications for Modification of Special Permit

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of Applications for Modifications of Special Permit.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier

Federal Register publications, they are not repeated here. Requests of modifications of special permits (e.g., to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix ''M'' demote a modification request. These applications have been separated from the new application for special permits to facilitate processing.

DATES: Comments must be received on or before February 8, 2008.

ADDRESS COMMENTS TO: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue, SE., Washington, DC or at *http://dms.dot.gov*.

This notice of receipt of applications for modification of special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC on January 14, 2008.

Delmer F. Billings,

Director, Office of Hazardous Materials, Special Permits and Approvals.

MODIFICATION SPECIAL PERMITS

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permit thereof
14318–M	PHMSA–23861	Lockheed Martin Corporation (Former Grantee: Lockheed-Martin Technical Operations) Vandenberg AFB, CA.	49 CFR 173.315	To modify the special permit to clarify the requirement for a dedicated enclosed metal-sided truck.
14608–M		Ultimate Adventure Ballooning, LLC Washington, MO.	49 CFR 173.304	To reissue the special permit originally issued on an emergency basis for the transportation in commerce of non-DOT specification tanks that contain propane.

[FR Doc. 08–249 Filed 1–23–08; 8:45 am]

BILLING CODE 4909–60–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8925

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8925, Report of Employer-Owned Life Insurance Contracts.

DATES: Written comments should be received on or before March 24, 2008 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Glenn Kirkland, (202) 622–3428, at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *Glenn.P.Kirkland@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Report of Employer-Owned Life Insurance Contracts.

OMB Number: 1545–2089.

Form Number: Form 8925.

Abstract: Form 8925, Report of Employer-Owned Life Insurance Contracts, is used by a policyholder (who is engaged in a trade or business which employs the person insured and who is a direct or indirect beneficiary) to report certain information concerning the number of employees covered by employer-owned life insurance in force on those employees at the end of the tax year.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations, Farms.

Estimated Number of Respondents: 16,000.

Estimated Time per Respondent: 4 hours 28 minutes.

Estimated Total Annual Burden Hours: 71,360.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation,

maintenance, and purchase of services to provide information.

Approved: January 14, 2008.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E8–1146 Filed 1–23–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Art Advisory Panel of the Commissioner of Internal Revenue

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of determination of necessity for renewal of the Art Advisory Panel.

SUMMARY: It is in the public interest to continue the existence of the Art Advisory Panel. The current charter of the Art Advisory Panel will be renewed for a period of two years.

FOR FURTHER INFORMATION CONTACT: Karen E. Carolan, AP:ART, 1099 14th Street, NW., Room 4200E, Washington, DC 20005, Telephone No. (202) 435–5609, (not a toll free number).

Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. (2000), the Commissioner of Internal Revenue announces the renewal of the following advisory committee:

Title. The Art Advisory Panel of the Commissioner of Internal Revenue.

Purpose. The Panel assists the Internal Revenue Service by reviewing and evaluating the acceptability of property appraisals submitted by taxpayers in support of the fair market value claimed on works of art involved in Federal Income, Estate or Gift taxes in accordance with sections 170, 2031, and 2512 of the Internal Revenue Code of 1986.

In order for the Panel to perform this function, Panel records and discussions must include tax return information. Therefore, the Panel meetings will be closed to the public since all portions of the meetings will concern matters that are exempted from disclosure under the provisions of section 552b(c)(3), (4), (6) and (7) of Title 5 of the U.S. Code. This determination, which is in accordance with section 10(d) of the Federal Advisory Committee Act, is necessary to protect the confidentiality of tax returns and return information as required by section 6103 of the Internal Revenue code.

Statement of Public Interest. It is in the public interest to continue the existence of the Art Advisory Panel. The Secretary of Treasury, with the concurrence of the General Services Administration, has also approved renewal of the Panel. The membership of the Panel is balanced between museum directors and curators, art dealers and auction representatives to afford differing points of view in determining fair market value.

Authority for this Panel will expire two years from the date the Charter is approved by the Assistant Secretary for Management and Chief Financial Officer and filed with the appropriate congressional committees unless, prior to the expiration of its Charter, the Panel is renewed.

The Commissioner of Internal Revenue has determined that this document is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required. Neither does this document constitute a rule subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Linda E. Stiff,

Acting Commissioner of Internal Revenue.

[FR Doc. E8–1165 Filed 1–23–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request—Savings Associations Holding Company Application

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 24, 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 Patricia D. Goings (202) 906–5668, 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: Savings Associations Holding Company Application.

OMB Number: 1550–0015.

Form Number: H–(E).

Description: OTS analyzes each holding company application to determine whether the applicant meets the statutory criteria set forth in section 10(e) of the Act to become a savings and loan holding company. The forms are reviewed for adequacy of answers to

items and completeness in all material respects.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit institutions; Federal Government.

Estimated Number of Respondents: 50.

Estimated Frequency of Response: Other; when seeking regulatory activity request.

Estimated Burden Hours per Response: 500 hours.

Estimated Total Burden: 25,000.

Clearance Officer: Ira L. Mills, (202) 906–6531, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Dated: January 18, 2008.

Deborah Dakin,

Senior Deputy Chief Counsel, Regulations and Legislation Division.

[FR Doc. E8–1192 Filed 1–23–08; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Notice of Hiring or Indemnifying Senior Executive Officers or Directors

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 25, 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 *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: 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: Notice of Hiring or Indemnifying Senior Executive Officers or Directors.

OMB Number: 1550–0047.

Form Number: OTS Form 1606.

Description: Pursuant to 12 U.S.C. 1817(j), persons who proposed to acquire control of a savings association or savings and loan holding company must provide prior written notice to the Office of Thrift Supervision (OTS). That notice will now be made on the ''Interagency Notice of Change in Director or Senior Executive Officer'' and supplemented, as necessary, by information on the ''Interagency Biographical and Financial Report.'' Required notices must include at a minimum the information described in 12 U.S.C. 1817(j)(6)(A).

OTS is required to make a determination as to the hiring or appointment of senior executive officers or directors at savings institutions or thrift holding companies. The OTS's determination must be based upon an evaluation of the individual's competence, experience, character, and integrity. The information required by the collection is necessary to make this determination. Without this information, the OTS cannot accomplish the statutory requirement designed to protect the interests of the Savings Association Insurance Fund.

Type of Review: Extension without change of currently approved collection.

Affected Public: Business or other for profit.

Estimated Number of Respondents: 100.

Estimated Burden Hours per Response: 100 hours.

Estimated Frequency of Response: Other; As required per transaction.

Estimated Total Burden: 233 hours.

Clearance Officer: Ira L. Mills, (202) 906–6531, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Dated: January 18, 2008.

Deborah Dakin,

Senior Deputy Chief Counsel, Regulations and Legislation Division.

[FR Doc. E8–1207 Filed 1–23–08; 8:45 am]

BILLING CODE 6720–01–P

Federal Register

Thursday,
January 24, 2008

Part II

Environmental Protection Agency

40 CFR Parts 72 and 75

Revisions to the Continuous Emissions Monitoring Rule for the Acid Rain Program, NO_X Budget Trading Program, Clean Air Interstate Rule, and the Clean Air Mercury Rule; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 72 and 75

[EPA–HQ–OAR–2005–0132; FRL–8511–1]

RIN 2060–AN16

Revisions to the Continuous Emissions Monitoring Rule for the Acid Rain Program, NO_X Budget Trading Program, Clean Air Interstate Rule, and the Clean Air Mercury Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing rule revisions that modify existing requirements for sources affected by the federally administered emission trading programs including the NO_X Budget Trading Program, the Acid Rain Program, the Clean Air Interstate Rule, and the Clean Air Mercury Rule.

The revisions are prompted primarily by changes being implemented by EPA's Clean Air Markets Division in its data systems in order to utilize the latest modern technology for the submittal of data by affected sources. Other revisions address issues that have been raised during program implementation, fix specific inconsistencies in rule provisions, or update sources incorporated by reference. These revisions do not impose significant new requirements upon sources with regard to monitoring or quality assurance activities.

DATES: This final rule is effective on January 24, 2008, for good cause found as explained in this rule.

The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of January 24, 2008, for good cause found as explained in this rule.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2005–0132. All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air and Radiation Docket, EPA/DC, EPA West Building, EPA Headquarters Library, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Matthew Boze, Clean Air Markets Division, U.S. Environmental Protection Agency, Clean Air Markets Division, MC 6204J, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, telephone (202) 343–9211, e-mail at *boze.matthew@epa.gov.* Electronic copies of this document can be accessed through the EPA Web site at: *http://www.epa.gov/airmarkets.*

SUPPLEMENTARY INFORMATION: *Regulated Entities.* Entities regulated by this action primarily are fossil fuel-fired boilers, turbines, and combined cycle units that serve generators that produce electricity, generate steam, or cogenerate electricity and steam. Some trading programs include process sources, such as process heaters or cement kilns. Although Part 75 primarily regulates the electric utility industry, certain State and Federal NO_X mass emission trading programs rely on subpart H of Part 75, and those programs may include boilers, turbines, combined cycle, and certain process units from other industries. Regulated categories and entities include:

Category	NAICS code	Examples of potentially regulated industries
Industry	221112 and others	Electric service providers Process sources with large boilers, turbines, combined cycle units, process heaters, or cement kilns where emissions exhaust through a stack.

This table is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities which EPA is now aware could potentially be regulated by this action. Other types of entities not listed in this table could also be regulated. To determine whether your facility, company, business, organization, etc., is regulated by this action, you should carefully examine the applicability provisions in §§ 72.6, 72.7, and 72.8 of title 40 of the Code of Federal Regulations and in 40 CFR Parts 96 and 97. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of the final rule is also available on the WWW through the Technology Transfer Network Web site (TTN Web). Following signature, a copy of the rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control.

Judicial Review. Under CAA section 307(b), judicial review of this final action is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit on or before March 24, 2008. Under CAA section 307(d)(7)(B), only those objections to the final rule that were raised with specificity during the period for public comment may be raised during judicial review. Moreover, under CAA section 307(b)(2), the requirements established by today's final rule may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements. Section 307(d)(7)(B) also provides a mechanism for the EPA to convene a proceeding for reconsideration if the petitioner demonstrates that it was impracticable to raise an objection during the public comment period or if the grounds for such objection arose after the comment period (but within the time for judicial review) and if the objection is of central relevance to the rule. Any person seeking to make such a demonstration to EPA should submit a Petition for Reconsideration, clearly labeled as such, to the Office of the Administrator, U.S. EPA, Room 3000, Ariel Rios Building, 1200 Pennsylvania Ave., Washington, DC 20460, with a copy to the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel, Mail Code 2344A, U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

Outline

I. Detailed Discussion of Rule Revisions
A. Rule Definitions
B. General Monitoring Provisions
C. Certification Requirements

D. Missing Data Substitution
E. Recordkeeping and Reporting
F. Subpart H (NO_X Mass Emissions)
G. Subpart I (Hg Mass Emissions)
H. Appendix A
I. Appendix B
J. Appendix D
K. Appendix E
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O. Other Rule Revisions
II. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
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D. Unfunded Mandates Reform Act
E. Executive Order: 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
H. Executive Order 13211: Actions 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
L. Petition for Judicial Review
M. Determination Under Section 307(d)

I. Detailed Discussion of Rule Revisions

EPA is in the process of re-engineering the data systems associated with the collection and processing of emissions, monitoring plan, quality assurance, and certification data. The re-engineering project includes the creation of a client tool, provided by EPA that sources will use to evaluate and submit their Part 75 monitoring data. This process change will enable sources to assess the quality of their data prior to submitting the data using EPA established checking criteria. The process will also allow sources to report their data directly to a database. Having the data in a true database will allow the Agency to implement and assess the program more efficiently and will streamline access to the data. Also, this database structure will enable EPA to implement process changes that will reduce the redundant reporting of certain types of data. The re-engineered systems will be supported by a new extensible markup language (XML) data format that will replace the record type/column format currently used by EPA to collect electronic data. EPA intends to transition existing sources to the new XML electronic data report (XML–EDR) format during the 2008 reporting year. For sources reporting in 2008 for the first time, the new XML–EDR format should be used. All sources will be required to use the new process beginning in 2009.

Therefore, EPA finds good cause to determine that the final rule is effective on January 24, 2008. EPA normally issues final regulations with at least a 30-day effective date after **Federal Register** publication. However, this provision of the rule which pertains to the re-engineering of the Clean Air Markets Division's data systems and to implementation of the Clean Air Mercury Regulation (CAMR), must be effective by January 1, 2008. Today's rule allows sources the option of reporting emissions data in the new XML data reporting format in 2008, one year before the use of XML becomes mandatory. The final rule provides the necessary record keeping and reporting requirements to support the XML format. Second, sources subject to CAMR are required to install and certify continuous mercury (Hg) monitoring systems by January 1, 2009. To meet this deadline, companies with multiple CAMR-affected units will begin monitor certification testing in the first quarter of 2008. As described in Sections I.C.3 and I.O.3., today's rule adds two recently-published Hg test methods, *i.e.*, Methods 30A and 30B, to Part 75 as alternatives to the Ontario Hydro Method. For many sources, 30A and 30B will be the test methods of choice. Third, as discussed in Section I.A., today's rule defers until January 1, 2010 the requirement for the calibration standards used to certify Hg continuous emission monitoring systems (CEMS) under CAMR to be traceable to the National Institute of Standards and Technology (NIST). Fourth, for CAMR units that seek to qualify as low mass emitting units under § 75.81, Hg emission testing is required in 2008. As discussed in Section G.2., today's rule adds considerable flexibility to the way in which this testing is conducted, particularly for common stack configurations and groups of identical units. The use of Methods 30A and 30B for this testing is also desirable. Absent this determination of good cause, sources would not be able to begin scheduled monitoring certification activities until the necessary provisions of this rule became effective. A thirty day delay would significantly decrease the overall amount of time available for industry to comply with the certification deadline of January 1, 2009. Such a delay could result in sources not being able to meet the certification deadline, since industry would lose some of its ability to spread utilization of various certification resources (*i.e.*, test teams, equipment, and vendor support) over the entire course of 2008.

For these reasons, EPA believes it has good cause to expedite the effective date of this final rule.

A. Rule Definitions

Background

EPA proposed to add several new definitions to Part 72, including definitions for: ''Long-term cold storage'' (to mean the complete shutdown of a unit intended to last for at least two calendar years); ''EPA Protocol Gas Verification Program'' (to support the proposed calibration gas audit program); ''Air Emission Testing Body (AETB)'' and ''Qualified Individual'' (to support the proposed stack tester accreditation program).

EPA also proposed to modify the definitions of ''Capacity factor'', ''EPA protocol gas,'' and ''Excepted monitoring system'', and to remove the definition of ''Calibration gas'' and related definitions describing the various types of gas standards that are classified as calibration gas.

Summary of Rule Changes

All of the proposed new and modified definitions have been finalized without substantive changes. However, one commenter cautioned that removing the definitions of the calibration gas standards from Part 72 might have consequences that could necessitate further rule revisions. In view of this, the Agency reconsidered these proposed changes and the final rule retains all but one of the definitions. The definition of ''Research gas material'' was found to be identical to the definition of ''Research gas mixture'' and has been removed from the rule.

Further, for consistency with Method 30A, the new instrumental reference method for mercury (Hg) (which, as noted in sections I.C.3 and I.O.3 of this preamble has been added to the list of acceptable Hg reference methods in § 75.22), and in light of other changes in today's rule related to the certification of Hg monitoring systems, EPA is adding definitions of ''NIST traceable elemental Hg standards'' and ''NIST traceable source of oxidized Hg'' to § 72.2. These definitions pertain to Hg calibration gas standards and are deemed necessary for implementation of the continuous monitoring requirements of the Clean Air Mercury Regulation (CAMR).

Affected units under CAMR are required to install and certify Part 75-compliant Hg monitoring systems by January 1, 2009. To meet this requirement, the vast majority of the

certification testing will be performed in 2008. When CAMR was first proposed, only one reference test method (the Ontario Hydro (OH) Method) was prescribed for the relative accuracy test audits (RATAs) of the required Hg monitoring systems. However, the OH method is wet chemistry-based, and is both difficult and expensive to perform. Also, the laboratory analysis required to obtain the test results can take a week or more, making the OH method incompatible with the Hg emissions trading program described in the CAMR model rule.

In a cap and trade program, the RATA results must be known while the test team is still on-site, so that any necessary corrective actions can be taken and retesting performed without delay. With the OH method, if the results of the lab analysis indicate a RATA failure, a retest must be rescheduled and the Hg monitoring system is considered out-of-control until a subsequent RATA is passed. This can result in an extended missing data period and loss of Hg allowances.

Thus, it became apparent during the CAMR rulemaking that an alternative to the OH method was needed. An instrumental Hg reference method was put forth as the logical choice, because it would provide real-time Hg concentration data, allowing the RATA results to be known on the day of the test. When CAMR was published on May 18, 2005, EPA stated its intention to ''propose and promulgate'' an instrumental Hg reference method (see 70 FR 28636). In support of the final CAMR rule, Hg monitoring provisions were added to Part 75. Among these was an amendment to § 75.22, allowing the use of either the OH method or an ''instrumental reference method * * * subject to the approval of the Administrator'' for the certification testing of Hg continuous monitoring systems. Method 30A was published on September 7, 2007 in a direct-final rulemaking, and became effective on November 6, 2007 (*see* 72 FR 51494). Method 30A represents the fulfillment of the Agency's commitment to publish an instrumental reference method for Hg.

One of the most important Part 75 requirements for the certification of Hg continuous emission monitoring systems (CEMS) is that the concentrations of the elemental and oxidized Hg calibration gas standards used for the 7-day calibration error tests, linearity checks, and system integrity checks of the CEMS must be traceable to the National Institute of Standards and Technology (NIST) (*see* Part 75, Appendix A, Section 5.1.9). This NIST traceability requirement for Hg standards is modeled after the NIST traceability requirements in Section 5 of Appendix A for SO_2, NO_X, and diluent gas (CO_2 and O_2) calibration gas standards.

For the SO_2, NO_X, CO_2, and O_2 compressed gas standards used in Part 75 applications, ''NIST traceability'' means that the calibration gases have been prepared according to the EPA-approved protocol cited in Section 5.1.4 of Appendix A. Further, § 75.22(c)(1) requires NIST-traceable gas standards to be used to calibrate the instrumental reference methods used for relative accuracy testing of SO_2, NO_X, CO_2, and O_2 CEMS (*i.e.*, Methods 6C, 7E and 3A).

Prior to today's rulemaking, no NIST traceability protocols for Hg calibration standards were referenced in Part 75. The new definitions of ''NIST traceable elemental Hg standards'' and ''NIST traceable source of oxidized Hg'' address this deficiency and cite the EPA protocols that must be followed to ensure that the elemental and oxidized Hg standards are traceable to NIST. However, these protocols, which are referenced in Section 16.0 of Method 30A, are not yet fully developed, and are not expected to be ready for use until the latter part of 2008. A cooperative field demonstration program that will include representatives from EPA, NIST, industry, equipment vendors, and other key personnel is planned for the coming months, to gather the data necessary to refine and finalize the traceability protocols. Once these traceability protocols are finalized, they will be posted on the Agency's Technology Transfer Network Web site (*http://www.epa.gov/ttn/emc/*) and on the Agency's Clean Air Markets Division Web site (*http://www.epa.gov/airmarkets/*).

In view of this, EPA is temporarily deferring (until January 1, 2010) the requirement for elemental and oxidized Hg standards to be NIST traceable. The deferral affects both initial certifications of the CEMS and routine quality-assurance tests of the CEMS performed prior to January 1, 2010. Note that only the NIST traceability requirement for the Hg calibration standards is being waived, not the requirement to perform the calibration error tests, linearity checks, and system integrity checks of the Hg monitoring systems by January 1, 2009.

Beginning on January 1, 2010, all daily calibration error tests, linearity checks, and system integrity checks of Hg CEMS must be performed using NIST traceable elemental and oxidized Hg calibration standards, as defined in § 72.2. Section 5.1.9 of Appendix A to Part 75 has been revised to reflect this. In view of this, EPA strongly recommends that in 2009, all CAMR-affected sources should take the necessary steps to ensure that the NIST traceability requirement is met. In most cases, this will involve the certification of elemental and oxidized Hg generators, according to the traceability protocols. If a source elects to perform daily calibrations and/or linearity checks using compressed gas cylinders instead of an elemental Hg generator, the owner or operator will have to obtain cylinder gases that conform to the EPA traceability protocol for gaseous calibration standards.

Finally, note that EPA is conditionally allowing Method 30A to be used for Part 75 Hg emission testing and RATA applications prior to finalization of the traceability protocols in section 16.0 of the method. The condition is that interim traceability protocols are developed and posted on the Agency's Technology Transfer Network Web site (*http://www.epa.gov/ttn/emc/*), as ''broadly applicable alternative test method approvals'' that will expire when the final protocols are issued. EPA's authority to approve such test method alternatives is described in 72 FR 4257, January 30, 2007.

EPA believes that a phased-in approach to NIST traceability is appropriate and necessary, in light of the additional time needed to finalize the traceability protocols and the time required for the affected sources and equipment vendors to set up the necessary infrastructure to implement the protocols. The Agency also believes that this approach will not compromise the quality of the data for the emissions trading program under CAMR, since in 2010, the first year in which Hg emissions count against allowances held, NIST traceability of the Hg calibration standards is mandatory.

B. General Monitoring Provisions

1. Update of Incorporation by Reference (§ 75.6)

Background

Section 75.6 identifies a number of methods and other standards that are incorporated by reference into Part 75. This section includes standards published by the American Society for Testing and Materials (ASTM), the American Society of Mechanical Engineers (ASME), the American National Standards Institute (ANSI), the Gas Processors Association (GPA), and the American Petroleum Institute (API). EPA proposed changes to § 75.6 that would reflect the need to incorporate

recent updates for many of the referenced standards. The proposed revisions would recognize or adhere to these newer standards by updating references for the standards listed in §§ 75.6(a) through 75.6(f). Additionally, new §§ 75.6(a)(45) through 75.6(a)(48) and 75.6(f)(4) would incorporate by reference additional ASTM and API standards that are relevant to Part 75 implementation.

Summary of Rule Changes

The updates and additions to § 75.6 have been finalized as proposed. One commenter requested that an additional ASTM method for analyzing the sulfur content of low-sulfur fuel oil, i.e., ASTM D5453–06, ''Standard Test Method for Determination of Total Sulfur in Light Hydrocarbons, Spark Ignition Engine Fuel, Diesel Engine Fuel, and Engine Oil by Ultraviolet Fluorescence'', be added to the list of acceptable methods in § 75.6. This method has been incorporated by reference as § 75.6(a)(49) and has been added to section 2.2.5 of Appendix D.

2. Default Emission Rates for Low Mass Emissions (LME) Units

Background

EPA proposed to allow LME units to use site-specific default SO_2 emission rates for fuel oil combustion, in lieu of using the ''generic'' default SO_2 emission rates specified in Table LM–1 of § 75.19. To use this option, a federally enforceable permit condition would have to be in place for the unit, limiting the sulfur content of the oil. This revision, if made, would allow more representative, yet still conservatively high, SO_2 emissions data to be reported from oil-burning LME units. As proposed, the site-specific default SO_2 emission rate would be calculated using an equation from EPA publication AP–42. The sulfur content used in the calculations would be the maximum weight percent sulfur allowed by the federally-enforceable permit. Sources choosing to implement this option would be required to perform periodic oil sampling using one of the four methodologies described in Section 2.2 of Appendix D to Part 75, and would be required to keep records documenting the sulfur content of the fuel.

The Agency also proposed to revise § 75.19(c)(1)(iv)(G) to clarify that fuel-and-unit-specific default NO_X emission rates for LME units may be determined using data from a Continuous Emissions Monitoring System (CEMS) that has been quality-assured according to either Appendix B of Part 75 or Appendix F of Part 60, or comparably quality-assured under a State CEMS program. Lastly, the Agency proposed technical revisions to the Equations LM–5 and LM–6 changing the units of rate to units of measure to make the equations correct as units of rate cannot technically be summed.

Summary of Rule Changes

Commenters were generally supportive of the proposed revisions to § 75.19, and they have been finalized with only one substantive change. EPA has incorporated one commenter's suggestion not to restrict the allowable fuel oil sampling options to those described in Appendix D. The final rule allows the use of other consensus standard fuel sampling methods (e.g., ASTM, API, etc.) specified in applicable State or Federal regulations or in the unit's operating permit, to determine the sulfur content of the oil.

Another commenter requested that EPA go beyond its proposal for SO_2 and consider providing a similar, more reasonable site-specific alternative to reporting the generic NO_X emission rates in Table LM–2. Specifically, the commenter suggested that for units with very low annual capacity factors, the Agency should waive the testing requirements of §§ 75.19(c)(1)(iv) and allow emission test data that was generated more than 5 years ago (e.g., from a Part 60 performance test) to be used to determine fuel-specific default NO_X emission rates. The commenter asserted that the cost of additional testing could impose a financial burden on smaller affected sources. After careful consideration, EPA decided against allowing infrequently-operated units to use emission test data older than 5 years for Part 75 reporting. However, § 75.19(c)(1)(iv)(I) has been amended to provide reduced emission testing requirements for very low capacity factor LME units. The final rule allows single-load testing, between 75 and 100 percent of maximum load, to be performed (both for the initial Appendix E testing and for retests) if, for the 3 years prior to the year of the test, the unit's average capacity factor was 2.5 percent or less and did not exceed 4.0 percent in any of those three years. Alternatively, for combustion turbines, the emission test may be done at the maximum attainable load corresponding to the season of the year in which the test is performed. For a group of identical units, the single-load testing option may be used for any unit(s) in the group that meet the very low capacity factor requirements. For a more detailed discussion of this issue, refer to section 2.3.2 of the Response to Comments (RTC) document.

3. Default Moisture Value for Natural Gas

Background

EPA proposed to allow gas-fired boilers equipped with CEMS to use default moisture values in lieu of continuously monitoring the stack gas moisture content. Two conservative default values were proposed: 14.0% H_2O under § 75.11(b), and 18.0% H2O under § 75.12(b). The Agency also proposed that the higher default value would apply only when Equation 19–3, 19–4, or 19–8 (from Method 19 in appendix A–7 to part 60 of this chapter) is used to determine the NO_X emission rate. The proposed default values represent the 10th and 90th percentile values from two sets of supplemental moisture data provided to the Agency, which is consistent with the approach that the Agency has used in responding to past petitions under § 75.66 for site-specific default moisture values.

Summary of Rule Changes

No adverse comments were received on these proposed rule changes and they have been finalized.

4. Expanded Use of Equation F–23

Background

EPA proposed to revise § 75.11(e)(1) to remove the current restrictions on the use of Equation F–23 to determine the SO_2 mass emission rate, by allowing Equation F–23 to be used whether or not the unit has an SO_2 monitor and to expand its use to fuels other than natural gas. The proposal would allow Equation F–23 to be used for any gaseous fuel that qualifies for a default SO_2 emission rate under Section 2.3.6(b) of Appendix D. Further, Equation F–23 could be used for the combustion of liquid and solid fuels that meet the definition of ''very low sulfur fuel'' in § 72.2, if a petition for a fuel-specific default SO_2 emission rate is submitted to the Administrator under § 75.66 and the Administrator approves the petition. Under the proposed rule, petitions would also be accepted for the combustion of mixtures of these fuels and for the co-firing of these fuels with gaseous fuel.

Summary of Rule Changes

Commenters were supportive of the expanded use of Equation F–23 and the revisions to § 75.11(e) and corresponding changes to section 7 of Appendix F have been finalized as proposed.

5. Calculation of NO_X Emission Rate—LME Units

Background

EPA proposed to re-title § 75.19(c)(4)(ii) as ''NO_X mass emissions and NO_X emission rate'' and to add a new subparagraph (D) to § 75.19 (c)(4)(ii), providing instructions for determining quarterly and cumulative NO_X emission rates for a LME unit. The NO_X emission rate for each hour (lb/mmBtu) would simply be the appropriate generic or unit-specific default NO_X emission rate defined in the monitoring plan for the type of fuel being combusted and (if applicable) the NO_X emission control status. Then, the Agency proposed that the quarterly NO_X emission rate would be determined by averaging all of the hourly NO_X emission rates and the cumulative (year-to-date) NO_X emission rate would be the arithmetic average of the quarterly values.

Summary of Rule Changes

No adverse comments were received on these proposed rule changes and the revisions to § 75.19(c)(4)(ii) have been finalized as proposed.

6. LME Units—Scope of Applicability

Background

EPA proposed to revise § 75.19(a)(1) to clarify that the low mass emissions (LME) methodology is a stand-alone alternative to a CEMS and/or the ''excepted'' monitoring methodologies in Appendices D, E, and G. In other words, if a unit qualifies for LME status, the owner or operator is required either to use the LME methodology for all parameters or not to use the method at all. No mixing-and-matching of other monitoring methodologies with LME is permitted. Parallel revisions to §§ 75.11(d)(3), 75.12(e)(3), and 75.13(d)(3), consistent with the changes to § 75.19(a)(1), were also proposed to clarify the Agency's intent.

Summary of Rule Changes

No adverse comments were received on the proposed changes and they have been finalized.

7. Use of Maximum Controlled NO_X Emission Rate When Using Bypass Stacks

Background

Revisions to § 75.17(d)(2) were proposed that would allow a maximum controlled NO_X emission rate (MCR) to be reported instead of the maximum potential NO_X emission rate (MER) whenever an unmonitored bypass stack is used, provided that the add-on controls are not bypassed and are documented to be operating properly. For example, for a coal-fired unit equipped with FGD and SCR add-on emission controls, if the SCR is documented to be working during an FGD malfunction and the effluent gases are routed through an unmonitored bypass stack after passing through the SCR, then the MCR, rather than the MER, would be the more appropriate NO_X emission rate to report for the bypass hour(s). Documentation of proper add-on control operation for such hours of operation would be required as described in § 75.34(d). The MCR would be calculated in a manner similar to the calculation of the MER, except that the maximum expected NO_X concentration (MEC) would be used instead of the maximum potential NO_X concentration (MPC).

Summary of Rule Changes

Commenters were generally supportive of the proposed rule changes and they have been finalized. One commenter recommended that parallel language be added to § 75.72(c)(3), to cover non-Acid Rain Program units that are subject to the NO_X mass emissions monitoring provisions of Subpart H. EPA agrees with this comment and has added the necessary language to § 75.72(c)(3).

C. Certification Requirements

1. Alternative Monitoring System Certification

Background

EPA proposed to delete §§ 75.20(f)(1) and (2) from the rule, thereby removing the requirement for the Administrator to publish each request for certification of an alternative monitoring system in the **Federal Register**, with an associated 60-day public comment period. This rule provision is considered unnecessary, in view of the Agency's authority under Subpart E to approve alternative monitoring systems and the rigorous requirements in §§ 75.40 through 75.48 that alternative monitoring systems must meet in order to be certified.

Summary of Rule Changes

Commenters were supportive of the proposed amendments to § 75.20(f), and they have been finalized.

2. Part 60 Reference Test Methods

Background

On May 15, 2006, EPA promulgated final revisions to EPA reference test methods 6C, 7E, and 3A, which are found in Appendix A of 40 CFR Part 60. (See 71 FR 28082, May 15, 2006). These test methods are prescribed for Part 75 emission testing and RATAs. Three new testing options that were added to the methods were deemed unacceptable for use under Part 75. These include:

(1) Section 7.1 of revised EPA Method 7E, allowing for custom calibration gas concentrations to be produced by diluting EPA protocol gases, in accordance with Method 205 in Appendix M of 40 CFR Part 51.

(2) Section 8.4 of revised EPA Method 7E, allowing the use of a multi-hole ''rake'' probe to satisfy the multipoint traverse requirement of the method.

(3) Section 8.6 of revised EPA Method 7E, allowing for the use of ''dynamic spiking'' as an alternative to the interference and system bias checks of the method.

Although revised Method 7E states that for use under Part 75 the three options above require approval by the Administrator, EPA proposed to add similar language to § 75.22(a)(5) to reinforce its position regarding these testing alternatives.

Summary of Rule Changes

No adverse comments were received on the proposed amendments to § 75.22(a)(5) and they have been finalized. However, one commenter brought to EPA's attention another revision to the Part 60 reference methods that impacts Part 75. EPA Method 20 was also revised on May 15, 2006. Method 20 has been the NO_X emission test method prescribed for combustion turbines (CTs) in section 2.1.2.2 of Appendix E. Method 20 has also been used to determine fuel-specific NO_X emission rates for combustion turbines that qualify as low mass emissions (LME) units under § 75.19.

The original Method 20 required testing at 8 sampling points per run, with typical run times averaging about 15 to 20 minutes. However, the revised Method 20 no longer specifies the minimum number of test points per run, but rather requires sampling point selection to be done according to Method 7E. Revised Method 7E requires 12 traverse points for an emission test run (which would suffice for Appendix E testing), but the method also allows the results of stratification testing to be used to justify using three or, in some cases, one sample point instead. This raises questions about the required length of an Appendix E test run. For instance, if testing were required at only one point, each Appendix E test run would be reduced from 15–20 minutes to as little as 2 minutes (depending on the system response time). The commenter stated that such short sampling runs seem inadequate to

develop a substantial correlation curve for emission reporting. The commenter recommended that EPA modify Appendix E or Method 20 and either set a minimum run time of 20 minutes (providing an hour of data at each load) or specify a minimum number of sampling points for an Appendix E test of a CT.

EPA has incorporated the commenter's recommendations into Part 75. First, § 75.22(a)(5) has been amended to prohibit the use of Method 7E to determine the required number of sample points for the emission testing of a combustion turbine. Section 75.22(a)(5)(ii) requires the sample points to be determined according to section 2.1.2.2 of Appendix E, instead. Second, for the emission test of a CT, section 2.1.2.2 of Appendix E has been revised to require a minimum of 12 test points per run, located according to EPA Method 1. Third, amendments have been made to § 75.22(a)(6), § 75.19(c)(1)(iv)(A), section 6.5.10 of Appendix A, and sections 2.1.2.2 and 2.1.2.3 of Appendix E, to remove all references to EPA Method 20 from Part 75. Fourth, for the testing of an Appendix E boiler, the text of section 2.1.2.1 of Appendix E has been revised to require 12 traverse points per run, making it consistent with revised section 2.1.2.2 (note that this is not a new requirement—section 2.1.2.1 has always required 12 test points, located according to section 8.3.1 of Method 3, and that section refers back to Method 1). Finally, in section 2.1.2.3 of Appendix E, the references to the measurement system response time in section 5.5 of Method 20 (which section no longer exists) have been replaced with references to the response time provisions in sections 8.2.5 and 8.2.6 of Method 7E. Appendix E tests performed on CTs prior to the effective date of these amendments are grandfathered from the revised test point location requirements.

3. Mercury Reference Methods

Background

EPA proposed to add an alternative relative deviation (RD) specification for the results of mercury (Hg) emission data collected with paired Ontario Hydro (OH) reference method sampling trains. The principal RD specification in § 75.22(a)(7) is 10 percent. However, this acceptance criterion may be too stringent for sources with low Hg emissions. Therefore, for average Hg concentrations of 1.0 μg/m^3 or less, EPA proposed an alternative RD specification of 20 percent. This is consistent with the acceptance criteria for data from paired OH trains, as specified in Performance Specification 12A in Appendix B of 40 CFR Part 60.

EPA also proposed amendments to §§ 75.22(a)(7), 75.59(a)(7), 75.81(c)(1), and to sections 6.5.10 and 7.6.1 of Appendix A, allowing EPA Method 29 (back-half impinger catch, only) to be used as an alternative to the OH method, both for RATA testing and for periodic emission testing of units with low Hg mass emissions (≤29 lb/yr). Two caveats on the use of Method 29 were proposed. First, sources electing to use Method 29 (which is similar to the OH method, but somewhat simpler and more familiar to stack testers) would be required to use paired sampling trains (i.e., two trains sampling the source effluent simultaneously), and the RD specifications in § 75.22(a)(7) would have to be met for each run. Second, certain analytical and quality assurance (QA) procedures in the OH method (ASTM D6784–02) would have to be followed instead of the corresponding procedures in Method 29 (because the analytical and quality assurance/quality control (QA/QC) requirements of the OH method are more detailed and rigorous than those in Method 29), and testers could opt to follow several of the sample recovery and preparation procedures in the OH method instead of the Method 29 procedures.

Finally, the Agency solicited comment on the use of sorbent traps for reference method testing. Members of the regulated community had expressed an interest in using portable sorbent trap monitoring systems for Hg reference method testing, as an alternative to the OH method. EPA proposed to accommodate a possible future sorbent-based reference method by adding language to § 75.22(a)(7) that would allow an ''other suitable'' reference method approved by the Administrator to be used for Hg emission testing and RATAs.

Summary of Rule Changes

Commenters were generally supportive of the proposed amendments that would add Method 29 as an alternative Hg reference method, and those provisions have been finalized without substantive change. One commenter objected to the requirement to use paired sampling trains for OH and Method 29 tests, asserting that this adds to the cost of testing and may result in significant numbers of test runs being discarded. However, EPA does not agree with the commenter. The Agency believes rather that paired sampling trains provide added assurance of data quality when these test methods are used. The decision to require paired trains for the OH method was made during the rulemaking that led to publication of the Clean Air Mercury Regulation (CAMR) (*see* 70 FR 28636–28639, May 18, 2005).

Two commenters supported the proposed 20 percent alternative RD specification for low emitters, and that provision has been finalized. However, one of the commenters noted that even a 20 percent RD specification may be too stringent for extremely low Hg concentrations. EPA agrees that when Hg concentrations are exceptionally low (0.1 μg/m^3 or less), the 20 percent RD specification may be difficult to meet. Therefore, the final rule adds a third tier to the RD specifications in § 75.22. The paired train agreement is also considered to be acceptable if the absolute difference between the two measured Hg concentrations does not exceed 0.03 μg/m^3.

Several commenters strongly supported the proposal to allow the use of a sorbent-based reference method for Hg emission testing and for the RATAs of Hg monitoring systems. Since publication of the proposed rule, a great deal of progress has been made in this area. First, EPA conducted a Method 301 analysis of available data comparing sorbent trap sampling to the OH method. The results of this analysis showed that a sorbent-based sampling method can be a viable alternative reference method. Second, EPA drafted ''Method 30B'', a reference method that uses iodated carbon traps to measure vapor phase Hg emissions. Finally, as part of a direct final rulemaking, Method 30B was published on September 7, 2007 (*see* 72 FR 51494–51531), along with Method 30A, an instrumental Hg reference method. Today's final rule allows both Methods 30A and 30B to be used.

D. Missing Data Substitution

1. Block Versus Step-Wise Approach

Background

Historically, EPA's policy has required sources to use a ''block'' approach for CEMS missing data substitution. The percent monitor data availability (PMA) at the end of the missing data period has been used to determine which mathematical algorithm applies, and the substitute data value or values prescribed by that one algorithm have been reported for each hour of the missing data period.

However, EPA has recently reconsidered and revised its missing substitution data policy, to allow sources to apply the missing data algorithms in a stepwise manner instead of using the block approach. Under the

stepwise methodology, the various missing data algorithms are applied sequentially. That is, the least conservative algorithm is applied to the missing data hours until the PMA drops below 95%. Then, the next algorithm is applied until the PMA has dropped below 90%, and so on.

Since Part 75 is not clear about which of the two methods should be used for missing data substitution, EPA proposed to amend §§ 75.33 and 75.32(b), to clarify that the stepwise, hour-by-hour method is the preferred one, and that use of that method would be required for all CEMS data recorded on and after January 1, 2009, and for any CEMS data recorded in XML-format during the transition year of 2008.

Summary of Rule Changes

Commenters unanimously supported the proposal to adopt stepwise missing data substitution and the proposed amendments to §§ 75.32 and 75.33 have been finalized.

2. Substitute Data Values for Controlled Units

Background

For units with add-on emission controls, when the PMA for SO_2 or NO_X is below 90.0 percent, § 75.34(a)(3) has historically allowed the designated representative (DR) to petition the Administrator under § 75.66 for permission to report the maximum controlled concentration or emission rate recorded in a specified lookback period instead of reporting the maximum value recorded in that lookback period, for each missing data hour in which the add-on controls are documented to be operating properly. After more than ten years of implementing the Acid Rain Program, EPA no longer believes that such special petitions are necessary, because sources with add-on controls are required to implement a quality assurance/quality control (QA/QC) program that includes the recording of parametric data to document the hourly operating status of the emission controls. This parametric information must be made available to inspectors and auditors upon request. Therefore, any claim that the emission controls were operating properly during a particular missing data period can be easily verified through the audit process.

In view of this, the Agency proposed to remove from § 75.34(a)(3) and § 75.66(f) the requirement to petition the Administrator to use the maximum controlled SO_2 or NO_X concentration (or maximum controlled NO_X emission rate) from the applicable lookback period. The proposed revisions would simply allow the maximum controlled values to be reported whenever parametric data are available to document that the emission controls are operating properly. The proposed rule would further clarify that this reporting option applies only to the third missing data tier, when the PMA is greater than or equal to 80.0 percent, but less than 90.0 percent.

EPA also proposed to add a new paragraph (a)(5) to § 75.34, which would allow units with add-on emission controls to report alternative substitute data values for missing data periods in the fourth missing data tier, when the PMA is below 80.0 percent. Proposed § 75.34(a)(5) would allow the owner or operator to replace the maximum potential SO_2 or NO_X concentration (MPC) or the maximum potential NO_X emission rate (MER) with a less conservative substitute data value, for missing data hours where parametric data, (as described in §§ 75.34(d) and 75.58(b)) are available to verify proper operation of the add-on controls. Specifically, for SO_2 and NO_X concentration, the replacement value for the MPC would be the greater of: (a) The maximum expected concentration (MEC); or (b) 1.25 times the maximum controlled value in the standard missing data lookback period. For NO_X emission rate, the replacement value for the MER would be the greater of: (a) The maximum controlled NO_X emission rate (MCR); or (b) 1.25 times the maximum controlled value in the standard missing data lookback period. The NO_X MCR would be calculated in the same manner as the NO_X MER, except that the MEC, rather than the MPC, would be used in the calculation. The proposed alternative data substitution methodology in § 75.34(a)(5) would ensure that the substitute data values for the fourth missing data tier are always higher than the corresponding substitute data values for the third tier.

Finally, EPA proposed to revise § 75.38(c) to extend the alternative missing data options for the third and fourth tiers to mercury (Hg) concentration, and § 75.58(b)(3) would be revised to be consistent with the proposed revisions to §§ 75.34(a)(3), 75.34(a)(5), and 75.38(c).

Summary of Rule Changes

Comments on the proposed alternative missing data substitution values for controlled units were generally supportive and these provisions have been finalized. Two commenters requested that parallel language be added to § 75.72(c)(3), to extend the use of the new missing data provisions to ozone season-only reporters. Another commenter asked EPA to clarify that the MCR may be implemented on a fuel-specific basis. EPA has incorporated both of these suggestions in the final rule. Two other commenters suggested that, for common stack configurations, EPA should allow the substitute data values to be apportioned or prorated in some way instead of requiring maximum potential values to be reported, in cases where the emission controls installed on some of the units sharing the stack are documented to be operating properly, but such documentation cannot be provided for the controls on the other units. The Agency believes that this approach would unnecessarily complicate the missing data substitution process and would provide no assurance that emissions are not being underestimated. Therefore, this suggestion was not incorporated in the final rule.

3. Substitute Data Values for Hg

Background

EPA proposed to revise the Hg missing data procedures. First, for Hg CEMS, the text of § 75.38(a) would be amended to clarify that the PMA ''trigger conditions'' for Hg monitoring systems are different from the trigger conditions for all other parameters. For all parameters except Hg, the trigger points that define the boundaries of the four missing data tiers are 95 percent, 90 percent, and 80 percent PMA. However, for Hg the corresponding trigger points are 90 percent, 80 percent and 70 percent, respectively.

Second, EPA proposed to completely revise the missing data provisions in § 75.39 for sorbent trap monitoring systems, to make them the same as for Hg CEMS, so that. the initial missing data procedures of § 75.31(b) and the standard Hg missing data provisions of § 75.38 would be followed for sorbent trap systems. EPA believes that this proposed missing data approach greatly simplifies the missing data substitution process for Hg monitoring systems. The hourly Hg concentration data stream from a sorbent trap system will look essentially the same as the data stream from a CEMS, except that the Hg concentration will ''flat-line'' (i.e., will not change) during each data collection period. Therefore, under the proposal, when the owner or operator elects to use a primary Hg CEMS and a backup sorbent trap system (or vice-versa), the appropriate substitute data values would be derived from a lookback through the previous 720 hours of quality-assured data, irrespective of

whether they were from the primary monitoring system or from the backup system.

Summary of Rule Changes

Commenters were supportive of the proposed changes to the sorbent trap missing data procedures in § 75.39, and these provisions have been finalized.

4. Correction of Cross-References

Background

For sources that report emissions data on an ozone season-only basis, EPA proposed to revise § 75.74(c)(3)(xi) and (c)(3)(xii) by replacing references to specific missing data sections with more general references to the entire block of CEMS missing data sections, i.e., §§ 75.31 through 75.37.

Summary of Rule Changes

No adverse comments were received on these proposed rule changes and they have been finalized, as proposed.

E. Recordkeeping and Reporting

Background

To accommodate its new, re-engineered XML reporting format, which will replace the current electronic data reporting (EDR) format in 2009, EPA proposed to revise the monitoring plan recordkeeping requirements in § 75.53, with corresponding revisions to § 75.73(c)(3) (for sources reporting NO_X mass emissions under Subpart H) and to § 75.84 (for sources reporting Hg mass emissions under Subpart I).

EPA proposed to add two new paragraphs, (g) and (h), to § 75.53, which describe the required monitoring plan data elements in EPA's re-engineered XML data structure. Under this proposal, the provisions of paragraphs (g) and (h) would be followed instead of the existing recordkeeping requirements of paragraphs (e) and (f), on and after January 1, 2009. In 2008, sources would be allowed to choose between the EDR format and XML, but new sources reporting for the first time in 2008 would be strongly encouraged to use the XML format. Included among the proposed monitoring plan changes would be mandatory recording and reporting of the key rectangular duct wall effects data elements using these record types. The proposed requirements to record and report the results of wall effects adjustment factor (WAF) determinations in the monitoring plan are found in §§ 75.53 (e) and (g) and in § 75.64.

EPA also proposed to make a series of modifications to §§ 75.58 and 75.59 to support the new XML data structure. The proposed changes to the monitoring plan and recordkeeping sections were presented, section-by-section, in Tables 1, 2, and 3 in the preamble to the August 22, 2006 proposed rule.

Summary of Rule Changes

No significant adverse comments were received on the proposed changes and they have been finalized.

1. Other Reporting Issues

a. Long-Term Cold Storage and Deferred Units

Background

EPA proposed changes to Part 75 to clarify the meaning of the term ''long-term cold storage (LTCS)'', found in § 75.4(d). First, a proposed definition of long-term cold storage would be added to § 72.2. LTCS would mean that the unit has been completely shut down and placed in storage and that the shutdown is intended to last for an extended period of time (at least two calendar years). Second, the Agency proposed to add a new paragraph, (a)(7), to § 75.61, requiring the owner or operator to provide notifications when a unit is placed in LTCS and when the unit re-commences operation. Third, modifications to § 75.20(b) were proposed, requiring recertification of all monitoring systems when a unit re-commences operations after a period of long-term cold storage. If a source claiming LTCS status re-commenced operation sooner than two years after being placed in LTCS, the notification and recertification requirements would apply. Fourth, the proposed rule would exempt a unit in LTCS from quarterly emissions reporting under § 75.64 until the unit recommences operation. Parallel LTCS rule provisions and appropriate cross-references regarding quarterly reporting requirements for Subpart H and Subpart I units would be added to §§ 75.73(f)(1) and 75.84(f)(1), respectively, for consistency.

EPA also proposed to revise the provisions of §§ 75.4(d) and 75.61(a)(3) pertaining to ''deferred'' units, i.e., units for which a planned or unplanned outage prevents the required continuous monitoring systems from being certified by the compliance date. The proposed revisions would broaden the scope of § 75.4(d) beyond the Acid Rain Program, to include units in State or Federal pollutant mass emissions reduction programs that adopt the monitoring and reporting provisions of Part 75. Examples of such programs include the Clean Air Interstate Regulation (CAIR), which is scheduled to begin in 2008 and the Clean Air Mercury Regulation (CAMR), which goes into effect in 2009. The proposed revisions to §§ 75.4(d) and 75.61(a)(3) were deemed necessary because the CAIR and CAMR rules do not address deferred units.

The proposed revisions to § 75.4(d) would require the owner or operator of a deferred unit to provide notice of unit shutdown and recommencement of commercial operation, either according to § 75.61(a)(3) (for planned shutdowns such as scheduled maintenance outages and for unplanned, forced unit outages) or § 75.61(a)(7) (for units in long-term cold storage). For all of these circumstances involving deferred units, EPA proposed that the Part 75 continuous monitoring systems would have to be certified within 90 unit operating days or 180 calendar days (whichever comes first) of the date that the unit recommences commercial operation. In the time interval between the unit re-start and the completion of the required certification tests, the owner or operator would be required to report emissions data, using either: (1) Maximum potential values; (2) the conditional data validation procedures of § 75.20(b)(3); (3) EPA reference methods; or (4) another procedure approved by petition to the Administrator under § 75.66. Finally, the Agency proposed to revise the notification requirements of § 75.61(a)(3) to be consistent with the proposed changes to § 75.4(d).

Summary of Rule Changes

Commenters were generally supportive of the proposed long-term cold storage provisions, requesting only minor clarifications. These provisions have been finalized with no substantive changes. One commenter encouraged EPA to adopt the proposed amendments to broaden the scope of § 75.4(d), to ensure that deferred units under programs such as CAIR and CAMR are provided with a reasonable window of time in which to certify the required monitoring systems, when the units resume operation. EPA has finalized these amendments to § 75.4(d), as proposed.

b. Notice of Initial Certification Deadline

Background

EPA proposed to add a new paragraph (a)(8) to § 75.61, to require new and newly affected sources to notify EPA when the monitoring system certification deadline is reached. Depending on the program(s) to which the unit is subject, this date will always be a particular number of calendar days or unit operating days after a unit either:

(a) Commences commercial operation; (b) commences operation; or (c) becomes an affected unit. For Acid Rain Program sources, the Agency must know this date to correctly assess when to begin counting emissions against allowances pursuant to § 72.9. Knowing this date also confirms that the monitoring systems either have or have not been certified by the legal deadline.

Summary of Rule Changes

One commenter asserted that the requirement for sources to submit to EPA a notification of the deadline for initial monitoring system certification is unnecessarily burdensome and should not be incorporated into Part 75. Another commenter requested that the information be reported in the electronic monitoring plan, rather than requiring a separate notification. EPA does not agree that reporting this information will be burdensome or that it is appropriate to report the date of the initial certification deadline in the electronic monitoring plan. Rather, this date is an essential data element that will be managed using the web-based CAMD Business System (CBS). Therefore, the notification requirement can be met electronically using the CBS. In view of this, the amendment to § 75.61 has been finalized, as proposed.

c. Monitoring Plan Submittal Deadline

Background

EPA proposed to amend § 75.62(a) by changing the submittal deadline for the initial monitoring plan for new and newly-affected units from 45 days to 21 days prior to the initial certification testing, in order to synchronize the initial monitoring plan submittal with the initial test notice. Corresponding changes to Subpart H (§ 75.73(e)) and to Subpart I (§ 75.84(e)) were proposed, for consistency.

EPA also proposed to remove the requirement from § 75.62(a)(1) that the electronic monitoring plan must be submitted ''in each electronic quarterly report''. Rather, inclusion of the monitoring plan in the report would be optional, and monitoring plan updates would be made either prior to or concurrent with (but not later than) the date of submission of the quarterly report. These proposed revisions would allow sources to maintain their monitoring plan information separate from the quarterly report, but this option would only be available to sources reporting in the new XML format under the re-engineered data submission process.

Summary of Rule Changes

No adverse comments were received on these proposed rule changes and they have been finalized, as proposed.

d. EPA Form 7610–14

Background

EPA proposed to amend §§ 75.63(a)(1) and (a)(2), to remove the requirement to submit hardcopy EPA form 7610–14 along with every certification or recertification application. Significant upgrades to EPA's data systems have been made in recent years, and Form 7610–14 is no longer needed to process these applications.

Summary of Rule Changes

No adverse comments were received on these proposed rule changes and they have been finalized, as proposed.

e. LME Applications

Background

EPA proposed to remove the requirement from § 75.63(a)(1)(ii)(A) for a hardcopy LME certification application to be submitted to the Administrator. The proposal would require only the electronic portion of the application, including the monitoring plan and LME qualification records, to be sent to EPA's Clean Air Markets Division. The hardcopy portion of the LME application would be sent to the State and to the EPA Regional Office.

Summary of Rule Changes

No adverse comments were received on these proposed rule changes and they have been finalized, as proposed.

f. Reporting Test Data for Diagnostic Events

Background

EPA proposed to revise § 75.63(a)(2)(iii) to make the reporting of the results of diagnostic tests more flexible. Rather than requiring these test results to be reported in the electronic quarterly report for the quarter in which the tests are performed, they could either be submitted prior to or concurrent with that quarterly report. However, this proposed flexibility in the reporting of diagnostic test results would only be available to sources reporting in the new XML format under the re-engineered data submission process.

Summary of Rule Changes

No adverse comments were received on these proposed rule changes and they have been finalized, as proposed.

g. Modifications to § 75.64

Background

As part of its data systems re-engineering effort, EPA proposed to revise § 75.64(a) to describe the transition from the existing EDR reporting requirements to the reporting requirements of the new XML format. The Agency proposed to renumber several paragraphs, to replace paragraphs (a)(1) and (a)(2) with new paragraphs (a)(3) through (a)(7), and to remove existing paragraph (a)(8).

Summary of Rule Changes

No adverse comments were received on these proposed rule changes. These amendments to § 75.64(a) have been finalized, as proposed.

h. Steam Load Reporting

Background

EPA proposed to add a third option to Part 75 for reporting load data in units of mmBtu/hr of steam thermal output. This option is needed to accommodate emissions trading programs in which allowance allocations are made on an electrical or thermal output basis, rather than a heat input basis. The Agency proposed to add text to several sections in the main body of Part 75 and to the Appendices, to accommodate the new reporting option.

Summary of Rule Changes

No adverse comments were received on these proposed rule changes and they have been finalized, as proposed.

i. Test Notification Requirements—Hg Low Mass Emission Units

Background

Section 75.61(a)(5) requires the owner or operator or the designated representative to provide 21-day advance notice for various periodic quality-assurance tests, including the semiannual or annual relative accuracy tests of CEMS, and for the re-tests of Appendix E peaking units and low mass emissions (LME) units. Test notices must be provided to the Administrator, to the appropriate EPA Regional Office and to the State or local agency (unless a particular agency issues a waiver from the requirement).

Under Subpart I of Part 75, certain low-emitting units covered by the Clean Air Mercury Regulation (CAMR) may qualify under §§ 75.81(b) through (d) to perform periodic (semiannual or annual) Hg emission testing in lieu of operating and maintaining continuous Hg monitoring systems. EPA proposed to expand the notification requirements of § 75.61(a)(5) and to add

corresponding introductory text to § 75.61(a)(1), requiring the owner or operator or the designated representative to provide at least 21 days notice of the scheduled dates of these periodic Hg emission tests.

Summary of Rule Changes

No adverse comments were received on this proposed rule change and this test notification requirement has been finalized, as proposed.

j. Hardcopy Reports for Retests of Hg Low Mass Emission Units

Background

Sections 75.60(b)(6) and (b)(7) require the designated representative (DR) to submit the results of certain periodic quality-assurance tests to the appropriate EPA Regional Office or to the State or local agency, when the test results are requested in writing (or by electronic mail). In particular, the results of semiannual or annual RATAs of CEMS and the routine re-tests of Appendix E units may be requested. If requested, the test results must be submitted within 45 days after the test is completed or within 15 days of the request, whichever is later. EPA proposed to add a new paragraph (b)(8) to § 75.60, requiring the DR to provide, upon request from EPA or the State, the results of the semiannual or annual Hg emission tests required under § 75.81(d)(4) for low-emitting units covered by CAMR. The proposed time frame for submitting these Hg emission test results would be the same as the current one for the RATAs and Appendix E re-tests.

Summary of Rule Changes

No adverse comments were received and this provision has been finalized, as proposed.

k. Wall Effects Adjustment Factors

Background

For sources with flow monitors installed on circular stacks, reporting of wall effects information is currently required by §§ 75.64(a)(2)(xiii), 75.73(f)(1)(ii)(K) and 75.84(f)(1)(ii)(I), when Method 2H is used in conjunction with Method 2, 2F or 2G. The specific wall effects data elements that must be reported are found in § 75.59(a)(7)(ii) and (a)(7)(iii). These data are submitted along with flow RATA results, as supplementary information.

For rectangular stacks and ducts, some of the same supporting data elements in § 75.59(a)(7)(ii) and (a)(7)(iii) are needed for flow RATAs performed using Method 2F or 2G, when wall effects corrections are applied. Additional supporting data elements, not in the current rule, are also needed for Method 2 flow RATAs when wall effects adjustments are made. In view of this, EPA proposed to revise the text of §§ 75.64(a)(2)(xiii), 75.73(f)(1)(ii)(K) and 75.84(f)(1)(ii)(I) and to add RATA support data elements to a new paragraph, (vii), in § 75.59(a)(7), to clarify which wall effects data elements must be reported for circular stacks, which ones are reported for rectangular stacks and ducts, and which data elements must be reported for both types of stacks.

Summary of Rule Changes

No adverse comments were received on these proposed rule changes and they have been finalized, as proposed.

F. Subpart H (NO_X Mass Emissions)

1. Subpart H Diluent Monitoring Systems

Background

For coal-fired Subpart H units that calculate NO_X mass emissions as the product of NO_X concentration and flow rate and are required to monitor and report the unit heat input, § 75.71(a)(2) requires the installation of an ''O_2 or CO_2 diluent gas monitor''. Consistent with the definition of a CEMS in § 72.2, this diluent monitor, which is only used for the heat input determination, should be described as an ''O_2 or CO_2 monitoring system''. EPA proposed to revise the text of § 75.71(a)(2) accordingly.

Summary of Rule Changes

No adverse comments were received. This clarification of § 75.71(a)(2) has been finalized, as proposed.

2. Identifying a NO_X Mass Methodology

Background

EPA proposed to revise § 75.72 to require that only one NO_X mass emissions methodology be identified in the monitoring plan at any given time, and to disallow the designation of primary and secondary NO_X mass calculation methodologies. EPA believes that one methodology for NO_X mass emissions is sufficient. If a source is subject to both Subpart H and to the Acid Rain Program (ARP) and is concerned about losing NO_X data when the diluent component of the NO_X emission rate system is out-of-control, that source should choose the NO_X concentration times flow rate calculation method as the NO_X mass calculation methodology. This would require a NO_X concentration system to be identified in the monitoring plan, in addition to the NO_X emission rate system. The NO_X concentration system would be used only to determine NO_X mass emissions, and the NO_X emission rate system would be used only to meet the ARP requirement to report NO_X in lb/mmBtu.

Summary of Rule Changes

No adverse comments were received. This provision has been finalized, as proposed.

3. Reporting of Subpart H Facility Information

Background

Consistent with the proposed revisions to § 75.64, EPA proposed to revise § 75.73(f)(1), to phase out the requirement of § 75.73(f)(1)(i)(B) to include facility location information in each quarterly report.

Summary of Rule Changes

No adverse comments were received. This provision has been finalized, as proposed.

4. Linearity Check Requirements for Ozone Season-Only Reporters

Background

For Subpart H sources that report emissions data on an ozone season-only (OSO) basis, EPA proposed to revise the linearity check provisions in § 75.74(c)(2), (c)(2)(i), (c)(2)(ii), (c)(3)(ii), (c)(3)(vi), and (c)(3)(viii). Historically, OSO reporters have been required to do a pre-season linearity check, an in-season second quarter linearity check (in May or June, if the unit operates for ≥ 168 hours in May and June), and a third quarter linearity check, if the unit operates for ≥ 168 hours in that quarter. Many sources have misunderstood these rule provisions, particularly the requirement to perform an in-season linearity check in the second quarter. In some cases, this has resulted in CEMS out-of-control periods and has required the use of missing data substitution. OSO reporters have also been required to operate and maintain each CEMS and to perform daily calibration error tests, in the time period extending from the hour of completion of the pre-season linearity check through April 30. EPA has found that this rule provision is also not well-understood by the affected sources and assessing compliance with the provision has been difficult, since sources have not been required to report the results of any off-season calibration error tests done prior to April.

In view of these considerations, EPA proposed to revise § 75.74(c)(2) to require the pre-season linearity checks to be conducted in the month of April, and to delete all references to

performing the pre-season linearity checks at other times. The Agency also proposed to remove the conditional grace period provision from § 75.74(c)(2)(i)(D), and to address (in § 75.74(c)(3)(ii)(E)) data validation in the case where the April linearity check is not completed prior to the start of the ozone season. In that case, data from the monitor would be considered invalid as of May 1, unless the conditional data validation procedures of § 75.20(b)(3) are applied. A 168 unit operating hour period of conditional data validation would be allowed, in which to perform the required linearity check. Passing the linearity check on the first attempt within the allotted time would result in the conditionally valid data becoming quality-assured. Failing the linearity check would result in all data from the monitor be invalidated back to the beginning of the ozone season and the data would remain invalid until a linearity check is passed. Performing the linearity check after the 168-hour period expires would require the data validation provisions in § 75.20(b)(3)(viii) to be applied, subject to the restrictions of § 75.74(c)(3)(xii).

EPA proposed to add a new paragraph (F) to § 75.74(c)(3)(ii), stating that a pre-season linearity check done in April fulfills the second quarter linearity check requirement, and to remove and reserve related Section 75.74(c)(3)(viii). Further, proposed § 75.74(c)(3)(ii)(B) would require the third quarter linearity check to be conducted either by July 30 or within a 168 operating hour period of conditional data validation thereafter. Finally, the Agency proposed that § 75.74(c)(3)(ii)(G) would address the case where a unit operates infrequently and the 168 operating hour conditional data validation period associated with the April linearity check extends through the second quarter, into the third quarter. In that case, if a linearity check is performed and passed in the third quarter, before the 168 operating hour window expires, EPA proposed that this one linearity check would satisfy all three of the ozone season linearity check requirements, i.e., for the pre-season, for the second quarter, and for the third quarter.

Summary of Rule Changes

The amendments to § 75.74(c) have been finalized, as proposed. Commenters supported EPA's proposal to allow a linearity check performed in April to satisfy both the pre-season and second quarter linearity check requirements. However, several commenters requested that the Agency allow greater flexibility in the timing of the required linearity checks. The proposed amendments requiring the pre-season linearity check to be performed April and the 3rd quarter test to be done in July were perceived as being too restrictive. EPA does not agree with these commenters that the revised quality assurance requirements for ozone season-only reporters lack flexibility. The amendments allow sources to use conditional data validation for up to 168 unit or stack operating hours, in situations where the linearity check cannot be completed by the prescribed deadline. If the required test is performed and passed within the allotted window of time, the source will incur no data loss. OSO reporters desiring greater flexibility in scheduling quality assurance tests should seriously consider switching to year-round reporting. Doing so would provide many benefits, such as grace periods, test deadline extensions, and in some cases, test exemptions.

5. RATA Requirements for Ozone Season Only Reporters

Background

For Subpart H sources that report NO_X mass emission data on an ozone season-only (OSO) basis, Part 75 has required, for quality-assurance purposes, that at the start of each ozone season each required CEMS must be within the ''window'' of data validation of a current, non-expired RATA. In past years, this requirement has been met either by performing a RATA in the pre-season (between October 1 and April 30) or, in some instances, by relying on the results of a RATA done in the previous ozone season. The rule has further required each CEMS to be operated, calibrated and maintained in the time period extending from the completion of the RATA, through April 30. Many sources choosing the OSO reporting option find this operation and maintenance (O&M) requirement to be counter intuitive, because they expect to be required to meet Part 75 monitoring obligations only during the ozone season.

In view of these considerations, EPA proposed to restrict the window of time in which pre-season RATAs may be performed. As proposed, § 75.74(c)(2)(ii) would require the RATAs to be done either in the first quarter of the year or in the month of April. That restriction would prohibit RATAs done in the previous year from being used to validate data in the current ozone season.

EPA also proposed to revise § 75.74(c)(2)(ii)(F), to address data validation. The proposed data validation rules for RATAs are similar to those proposed for linearity checks, in that a period of conditional data validation (720 operating hours) would be allowed when the pre-season RATA is not completed by the April 30th deadline. Consistent with these revisions, the Agency proposed to delete the data validation and conditional grace period provisions in § 75.74(c)(2)(ii)(G) and (c)(2)(ii)(H) and to remove and reserve § 75.74(c)(3)(vi), (vii), and (viii).

Summary of Rule Changes

The amendments to § 75.74(c) have been finalized, as proposed. One commenter objected to the proposed restriction on the timing of the RATAs and requested that the existing flexibility in the rule be retained. The commenter expressed a strong preference to perform RATAs in the autumn, rather than in the January-April time frame proposed by EPA. A second commenter stated that EPA should remove the requirement to keep records of off-season daily calibration and interference check records in a format suitable for inspection from § 75.74(c)(2)(ii)(E)(*1*).

Regarding the first commenter's assertion that the proposed RATA time frame for OSO reporters is too restrictive, EPA recommends that the owner or operator seriously consider switching to year-round reporting. Year-round reporting allows complete freedom to schedule RATAs at any convenient time during the year and provides many benefits, such as grace periods, test deadline extensions, and in some cases, test exemptions. Even if EPA had decided not to amend the RATA provisions for OSO reporters, § 75.74(c)(2)(ii)(E)(*1*) would still require the CEMS to be operated, maintained and calibrated in the time period between the RATA and the start of the next ozone season. Thus, if the RATAs are performed in the autumn (e.g., November), the CEMS would have to be maintained and calibrated for at least 10 months of the year; in this case, OSO reporting offers no clear advantage over year-round reporting.

EPA did not incorporate the second commenter's suggestion to remove the recordkeeping requirement from § 75.74(c)(2)(ii)(E)(*1*). However, the text of § 75.74(c)(6)(iii) has been revised to remove the requirement to report the daily calibrations and interference checks done in the month of April. The requirement to record these data remains intact, but the reporting has been made optional.

6. Determining Peaking Status for Ozone Season Only Reporters

Background

EPA proposed to revise § 75.74(c)(11) to clarify that when peaking unit status for ozone season-only reporters is determined, 3,672 hours (i.e., the number of hours in the ozone season) should be used instead of 8,760 hours in the capacity factor equation.

Summary of Rule Changes

No adverse comments were received. This provision has been finalized, as proposed.

7. Calculation of Ozone Season NO_X Mass Emissions—LME Units

Background

EPA proposed to correct an organizational error in Subpart H of Part 75. The proposal would remove § 75.72(f), which describes ozone season NO_X mass calculations for units using the low mass emission (LME) methodology under § 75.19, and the basic content of § 75.72(f) would be relocated to § 75.71(e). The LME provision in § 75.72 appears to have been inadvertently placed in that section. The monitoring provisions of § 75.72 apply to common and multiple stack configurations, whereas § 75.71 addresses unit-level monitoring. LME is a unit-level monitoring methodology.

Summary of Rule Changes

No adverse comments were received. This provision has been finalized, as proposed.

G. Subpart I (Hg Mass Emissions)

1. Heat Input Provisions for Common and Multiple Stacks

Background

Due to an apparent oversight, the heat input monitoring provisions for certain monitoring configurations in Subpart I of Part 75 were inadvertently omitted when Subpart I was promulgated. In particular, EPA found the heat input methodologies for common stacks shared by affected and non-affected units and for multiple stack or duct configurations to be missing. In view of this, the Agency proposed to add three new paragraphs, (b)(3), (c)(4) and (d)(3) to § 75.82 to correct this deficiency.

For the common stack shared by affected and non-affected units, proposed § 75.82(b)(3) would require the owner or operator to either measure the total heat input rate at the common stack and apportion it to the individual units by load, according to § 75.16(e)(3), or to determine the heat input rate at the individual units by installing a flow monitor and a diluent monitor on the duct leading from each unit to the common stack. For multiple stack configurations, proposed § 75.82(c)(4) and (d)(3) would require the owner or operator to determine the hourly unit heat input by measuring the hourly heat input rate (mmBtu/hr) at each stack, multiplying each stack heat input rate by the stack operating time (hr) to convert it to heat input (mmBtu), and then summing the hourly stack heat input values.

Summary of Rule Changes

No adverse comments were received. These provisions have been finalized, as proposed.

2. Low Mass Emission Alternative

Background

Section 75.81(b) of Subpart I provides an alternative (''excepted'') monitoring methodology for units with low Hg mass emissions. To qualify to use this methodology, emission testing is required to demonstrate that the unit has the potential to emit no more than 29 lb (464 ounces) of Hg per year. Once a unit qualifies, periodic retesting (semiannual or annual, depending on the emission level) is required to demonstrate that the unit is actually emitting less than 29 lb/yr of Hg.

Section 75.81(e), as originally published, allowed the low mass emission alternative to be used for common stacks, provided that the units sharing the stack are tested individually and each one qualifies as a low-emitter. Though not explicitly stated in the rule, it was implied that the periodic retests for common stack configurations would also have to be done at the unit level. EPA has reconsidered this approach, believing it to be overly restrictive, unnecessarily difficult, and costly to implement.

Therefore, EPA proposed to revise § 75.81(e) to require Hg testing of the individual units that share the common stack only for the initial demonstration that the units individually qualify as low emitters. Once this has been satisfactorily demonstrated, the required semiannual or annual retests could then be done at the common stack, at a normal load level for the configuration.

The proposed revisions to § 75.81(e) would also allow the initial low mass emitter qualification for a group of identical units sharing a common stack to be based on emission testing of a subset of those units. To exercise this proposed option, the group of units would first have to qualify as identical under § 75.19(c)(1)(iv)(B). Then, the number of units required to be tested would be determined from Table LM–4 in § 75.19.

The proposed amendments allowed one exception to the requirement to test the individual units sharing a common stack, in order to demonstrate that the units qualify for low mass emitter status, i.e., the case where the gas streams from the individual units are combined together and routed through emission controls that reduce the Hg concentration (e.g., a wet scrubber) before entering the common stack. Owners or operators electing to use this option would be required to perform the testing with all of the units that share the stack in operation, and the combined load during the testing would have to be ''normal'', as defined in Section 6.5.2.1 of Appendix A.

EPA also proposed to revise § 75.81(c)(1), to specify the acceptable time frame in which to perform the initial certification testing for the low mass emission option. As originally published, the rule simply states that this testing must be done ''prior to the compliance date in § 75.80(b)'', but does not specify how far in advance of that date the testing may be done and still be considered acceptable. Further, § 75.81(d)(1) requires the test results to be submitted as a certification application, no later than 45 days after completing the testing. And § 75.81(d)(4) requires periodic Hg retesting to commence within two or four ''QA operating quarters'' after the quarter of the certification testing.

If there is too long a gap between the certification testing and the start of the program, it becomes problematic. For instance, if the testing is done too early, the requirement to submit a certification application within 45 days could result in applications being submitted long before the regulatory agencies are ready to receive and process them. Also, the periodic retesting requirements of § 75.81(d)(4), which become active on the certification test date, could result in several Hg retests being done before the program begins. This is clearly contrary to the purpose of the retests, which, like the periodic relative accuracy tests of CEMS, are intended to commence after the compliance date, when Hg emissions reporting has begun. This also raises questions about which default emission rate to use for the initial reporting. In view of these considerations, EPA proposed to revise § 75.81(c)(1), to require that the Hg testing for initial certification be done no more than 1 year before the compliance date. Sections 75.81(d)(2) and 75.81(d)(5) would also be revised, to address the case where a retest may be required before the compliance date

(e.g., when § 75.81(d)(4) requires a retest within two QA operating quarters, following a certification test that was done 9 to 12 months before the compliance date). In such cases, the default Hg emission rate used at the beginning of the program would be the value that was obtained in the retest.

Finally, EPA proposed to amend §§ 75.81(d)(4) and (d)(5) to address the emission testing requirements when the fuel supply is changed. The proposed revisions would require additional Hg retesting within 720 unit operating hours, following a change in the fuel supply. The results of this retest would then be applied retrospectively, back to the time of the fuel switch. The Agency also proposed to revise § 75.81(c)(1) to require that the fuel combusted during the initial certification testing be from the same source of supply as the fuel combusted when the program starts. The proposed revisions only addressed the emission testing and reporting requirements for one case, i.e., where the source of supply for the primary fuel (assumed to be coal) changes. EPA solicited comments and suggestions on how to apply the Hg low mass emitter option in situations where the coal supply does not change, but the unit sometimes burns other types of fuel besides coal or co-fires mixtures of coal and other fuels (i.e., what emission testing and reporting requirements might be appropriate).

Summary of Rule Changes

Commenters were generally supportive of the proposed amendments that would reduce the testing requirements for Hg low mass emission units in common stack configurations. The final rule differs somewhat from the proposal, however, in that it also allows the initial qualifying test to be performed at the common stack, if certain conditions are met. The conditions are: (1) Testing must be done at a combined load corresponding to the designated normal load level (low, mid, or high) defined in the monitoring plan; (2) all of the units that share the stack must be operating in a normal, stable manner and at typical load levels during the emission testing; (3) the coal combusted in each unit during the testing must be representative of the coal that will be combusted in that unit at the start of the Hg mass emission reduction program (preferably from the same source(s) of supply); and (4) if flue gas desulfurization and/or add-on Hg emission controls are used to reduce the level of emissions exiting from the common stack, these emission controls must be operating normally during the emission testing and the owner or operator must record parametric data or SO_2 concentration data in accordance with § 75.58(b)(3)(i) to document proper operation of the controls.

For retests, provided that the required load level is attained and that all of the units sharing the stack are fed from the same on-site coal supply during normal operation, it is not necessary for all of the units sharing the stack to be in operation during a retest. However, if two or more of the units that share the stack are fed from different on-site coal supplies (e.g., one unit burns low-sulfur coal for compliance and the other combusts higher-sulfur coal), then the owner or operator must either: (1) Perform the retest with all units in normal operation; or (2) if this is not possible, due to circumstances beyond the control of the owner or operator (e.g., a forced unit outage), perform the retest with the available units operating and assess the test results as follows. The Hg concentration obtained in the retest is used for reporting purposes if the concentration is greater than or equal to the value obtained in the most recent test. However, if the retested value is lower than the Hg concentration from the previous test, then the higher value from the previous test continues to be used for reporting purposes, and that same higher Hg concentration is used in Equation 1 to determine the due date for the next retest.

The final rule expands the testing of groups of identical units beyond identical units that share a common stack. Section 75.81(c)(1)(iv) has been amended to allow a subset of any group of identical units to be tested according to Table LM–4 in § 75.19, whether or not the units share a common stack. This amendment is modeled after the provisions of § 75.19(c)(1)(iv)(B) for testing groups of identical LME units.

Several commenters objected to the proposed requirement to perform retesting of low mass emission units when the fuel supply is changed. Concerns were expressed that the term ''change in fuel supply'' is not clearly defined and could be interpreted to require frequent, unnecessary retesting, especially in light of the variation in coal supplies from day to day in competitive wholesale power markets. A number of the commenters recommended that retesting be limited to changes in coal rank or classification (e.g., changing from bituminous coal to sub-bituminous coal). EPA has incorporated the commenters' suggestion into the final rule. Section 75.81(d)(4) of the final rule clarifies what constitutes a ''change in fuel supply'' that will trigger LME retesting. If a unit switches to a different rank of coal as the primary fuel for the unit, in-between the scheduled LME retests (where coal rank is defined by ASTM D388–99), an additional LME retest is required within 720 operating hours of the change. The results of this retest are then applied retrospectively back to the date and hour of the fuel switch. The four principal coal ranks are anthracitic, bituminous, subbituminous, and lignitic. The ranks of anthracite coal refuse (culm) and bituminous coal refuse (gob) are considered to be anthracitic and bituminous, respectively.

Equation 1 in § 75.81(c)(2), which is used to demonstrate that a unit qualifies as a Hg low mass emissions unit, conservatively estimates the unit's potential annual Hg emissions by assuming that it operates at the maximum potential flow rate for 8,760 hours per year. One commenter requested that EPA consider modifying Equation 1 to conditionally allow a number of hours less than 8,760 to be used in the calculations, the condition being that there is a Federally-enforceable permit provision in place, limiting the unit's annual operating hours. EPA has incorporated this suggestion into the final rule. The term ''8,760'' in Equation 1 has been replaced with ''N'', which will either be 8,760 or the maximum number of operating hours per year allowed by the unit's Federally-enforceable operating permit (if less than 8,760). If the operating permit restricts the unit's annual heat input but not the number of annual unit operating hours, the owner or operator may divide the allowable annual heat input (mmBtu) by the design rated heat input capacity of the unit (mmBtu/hr) to determine the value of ''N''.

Finally, no comments were received on the proposal to require that the Hg emission testing for initial certification of a low mass emission unit be done no more than 1 year prior to the applicable compliance date. Therefore, this provision has been finalized, as proposed. For units subject to the Clean Air Mercury Regulation (CAMR), the certification deadline is January 1, 2009. In view of this, only those Hg emission tests of candidate low mass emission units that are performed on and after January 1, 2008 will be accepted for initial certification.

3. Harmonization of Subpart I With Other Proposed Rule Revisions

Background

Subpart I of Part 75 also contains a recordkeeping and reporting section (§ 75.84). which, for the most part, cross-references the primary monitoring

plan, recordkeeping, notification and reporting sections of the rule (i.e., §§ 75.53, 75.57 through 75.59, 75.61, and 75.64) and other sections of Subpart I.

To make Subpart I consistent with the proposed revisions to the monitoring plan, recordkeeping, notification, and reporting sections of Part 75, EPA proposed to make a number of minor adjustments to the text of §§ 75.84(c)(3), (e)(1), (e)(2), and (f)(1).

Summary of Rule Changes

No adverse comments were received. These provisions have been finalized, as proposed.

H. Appendix A

1. CO_2 Span Values

Background

EPA proposed to revise Section 2.1.3 of Appendix A, to allow the use of CO_2 spans less than 6.0 percent CO_2 if a technical justification is provided in the hardcopy monitoring plan. This added flexibility in the CO_2 span value mirrors a similar provision in Section 2.1.3 for O_2 span values.

Summary of Rule Changes

No adverse comments were received. This provision has been finalized, as proposed.

2. Protocol Gas Audit Program

Background

EPA is responsible for implementing air quality programs that rely heavily on the accuracy of calibration gas standards. Section 2.1.10 of ''EPA Traceability Protocol for Assay and Certification of Gaseous Calibration Standards'' (Protocol Procedures), September 1997 (EPA–600/R–97/121) states that EPA will periodically assess the accuracy of calibration gases and publish the results. Between 1978 and 1996, EPA conducted several performance audits of calibration gases from various manufacturers. One notable result of these audits was a steady, significant reduction in the failure rate of the audited gas cylinders, from about 27% in 1992 down to 5% in 1996. The annual audits were discontinued after 1996. Then, in 2003, EPA conducted a ''surprise'' audit of 14 national specialty gas producers and found that the failure rate had risen to 11%.

In view of this, EPA proposed to establish a Protocol Gas Verification Program (PGVP) and would require that EPA Protocol Gases being used for 40 CFR Part 75 purposes be obtained from specialty gas producers who participate in the PGVP. As proposed, the rule would allow only program participants to market their gas standards as ''EPA Protocol Gases.'' EPA proposed to maintain a web site, listing the PGVP participants and the audit results, in order to provide calibration gas users with detailed information about the quality of EPA Protocol Gases.

EPA also proposed to: (1) Add a definition of ''specialty gas producer'' to § 72.2; (2) delete several calibration gas standards and reference materials from section 5.1 of appendix A (believing them to be prohibitively expensive and not used in practice by Part 75 sources); (3) remove from § 72.2 the corresponding definitions of the deleted calibration gas standards; and (4) consolidate the remaining calibration gas standards under section 5.1 of appendix A.

Finally, EPA requested comment on the appropriate accuracy specification to apply to Hg cylinder gases and other Hg calibration standards (e.g., gases from NIST-traceable generators). Currently, EPA requires that accuracy of other EPA Protocol gases to be within 2 percent of the certified tag values.

Summary of Rule Changes

Only one organization commented on the proposed protocol gas verification program (PGVP). The commenter stated that a transition period is needed to implement the program. Sources need time to communicate with their gas vendors regarding their participation in the PGVP. The commenter further asserted that the PGVP would be disruptive and costly, both in the short-term and in the long-term, and that the affected sources would bear the brunt of the cost impact.

EPA agrees with the commenter regarding the need for a transition period. The final rule amends section 5.1.4 (c) to have the Protocol Gas Verification Program (PGVP) take effect on January 1, 2009. As the commenter has stated, the costs of the PGVP will be borne by the Part 75 sources using the calibration gases, and the Agency notes that these minimal costs ($5 to $10 added to a $500 to $1,000 cylinder) will be offset by the savings generated by fewer failed calibration error tests, linearity checks, and relative accuracy test audits.

3. Requirements for Air Emission Testing Bodies

Background

Since the inception of the Acid Rain Program, field audits of Part 75-affected facilities have brought to EPA's attention a number of improperly-performed RATAs and other QA/QC tests. In view of this, EPA proposed to revise Section 6.1 of Appendix A to require all individuals who perform the emission tests and CEMS performance evaluations required by Part 75 to demonstrate conformance with ASTM D7036–04 ''Standard Practice for Competence of Air Emission Testing Bodies''. ASTM D7036–04 specifies the general requirements for demonstrating that an air emission testing body (AETB) is competent to perform emission tests of stationary sources.

Proposed revisions to Section 6.1.2 of Appendix A, Section 2.1 of Appendix E, and Section 1 of Appendix B make it clear that this requirement would apply only to AETBs that perform RATAs, NO_X emission tests of Appendix E and LME units, or Hg emission tests of low-emitting units. It would not be applicable to the daily operation, daily QA/QC (daily calibration error check, daily flow interference check, etc.), weekly QA/QC (i.e., Hg system integrity checks), quarterly QA/QC (linearity checks, etc.), and routine maintenance of the CEMS.

EPA also proposed to incorporate ASTM Method D7036–04 by reference in § 75.6(a)(45), and to add a definition of ''Air Emission Testing Body'' to § 72.2.

Summary of Rule Changes

The amendments to Section 6.1.2 of Appendix A, Section 2.1 of Appendix E, and to Section 1 of Appendix B, requiring AETBs to conform to ASTM D7036–04, have been finalized, as proposed. Two commenters strongly supported the proposed revisions. However, several others objected to them, believing they would be costly and burdensome, without producing any noticeable improvement in data quality. EPA does not agree with these commenters, for the following reasons.

The experience of the State and Federal regulators in the ASTM work group indicates that implementation of the ASTM Practice will result in improved data quality. EPA believes the evidence is abundant that unqualified, under-trained and inexperienced testers are often deployed on testing projects. The Agency has had experiences with tests that have been invalidated or called into question due to poor performance by testing contractors (see Docket Items OAR–2005–0132–0009, –0021, and –0035). Conformance with ASTM D7036–04 does not guarantee that every test will be performed properly. However, it will reduce the likelihood of problems. Furthermore, it provides a guideline for both regulatory agencies and affected sources to evaluate and select competent testing

firms. One of the cornerstones of the Practice is that AETBs must collect performance data on how well they plan and execute test projects. These data must be shared with regulators and clients upon request.

In response to claims that ASTM D7036–04 will significantly increase the cost and burden of Part 75 testing, EPA notes that no data were provided to support these claims. The ISO 17025 standard upon which the ASTM standard is based has been implemented in Europe for many years. Mark Elliot, Chairman of the Stack Testing Association (STA) of Great Britain, has provided the following information on the costs of their programs. Their certification program (for individuals) is called MCERTS.

- MCERTS testing fees: Level 1 $350; Level 2 $940
- Technical endorsements (1–4): $350 each

The Level 2 certification requires a personal interview with the applicant. Please note that according to Mr. Elliot, this program has been successfully implemented in the UK with no small companies going out of business and no complaints of being overly burdensome on industry. In fact, many large companies such as Mobil, Dow, Pfizer, and 3M are members of the STA and fully support the program because, according to Mr. Elliot, they believe it improves the quality of the data provided by testing companies. Even major UK utility companies such as Drax Power, Energy Power Resources, the Electricity Supply Board, PB Power, Scottish and Southern Energy, and Scottish Power participate in the program. And they do this voluntarily because they have found it to their benefit to do so.

There are several differences between the program described in the final rule and the UK program. First, the final rule does not require accreditation. The individual testing requirements in the rule are less expensive and less stringent than the UK program. In the US, The Source Evaluation Society is currently providing Qualified Individual testing. The fees are $155 for the first test (including a one-time $15 SES membership) and $89 for any subsequent tests taken during the same testing session). It should also be noted that ASTM D7036–04 does not require that every individual be tested. Only one ''Qualified Individual'' need be present on-site during a test. Therefore, even this minimal cost and burden is considerably less than the successful UK program.

The costs of coming into initial compliance with the ASTM D7036–04 standard depend on the current state of an AETB's quality program. Those that do not currently have an organized quality program will most likely incur greater costs than those who do. In any case, the burden will be no greater than that experienced by the UK companies who successfully went through the same process.

The main costs to comply with the ASTM D7036–04 standard are associated with taking a stack test QSTI (qualified stack test individual) competency exam, and developing or revising a quality assurance (QA) manual. A nationwide compliance cost estimate may be obtained using the following estimates:

- 450 stack test companies in U.S. (The number of private (external) stack test companies came from *www.epa.gov/ttn/emc/software.html#testfirm*. RMB Consulting, Inc. estimated 10 in-house utility RATA test teams in the U.S.);
- On average, 10 people per company (Source: *www.epa.gov/ttn/emc/software.html#testfirm*);
- QSTI exam (required by ASTM) costs $150 and must be taken every 5 years (Source: December 11, 2006 letter from the Source Evaluation Society in Docket OAR–2005–0132); and
- Roughly 1 QSTI is required for every 3 people in a stack test company.

Using these inputs, the Agency estimates the cost to comply with ASTM D7036–04 at about $100 per yr per company to cover the QSTI exam. There is also approximately a $4,000 one time cost per company, whether a large or small entity as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201, to develop a QA manual (estimate provided by Air Tech, see Docket Item # EPA–HQ–OAR–2005–0132–0093). However, the costs will be borne by the Part 75 sources using the air emission testing bodies, and the Agency notes that these costs will be offset by the savings generated by fewer failed or incorrectly performed relative accuracy test audits, and fewer repeat tests required. Therefore, the effect of this revision is to actually relieve a regulatory burden on these entities.

Regarding the issue of the financial impact on smaller companies and the request to provide funds to these companies, EPA notes that small stack test companies were represented on the ASTM work group. At least one small stack test company (3 people) has already complied with ASTM D7036–04, is supportive of the requirement, and expects to actually realize an increase in business because of their compliance with ASTM D7036–04. As stated in another response, the costs to comply with ASTM D7036–04 are reasonable. Similar requirements have been successfully implemented for many years in the UK with no small companies going out of business and no complaints of being overly burdensome on industry. EPA does not expect to provide funds to support small stack test companies in meeting the requirements of ASTM D7036–04.

EPA notes that virtually the same program has been in place in Europe for several years and is functioning very well with the support of stack testers, the government, and industry. The ASTM standard is actually less stringent in some areas than the European program. Based on this extensive experience in Europe, EPA believes that this program can be successfully implemented here in the U.S. with very little additional burden. In summary, there is an abundance of both data and experience showing that this program can be implemented without an unreasonable burden, and also (according to UK industry participants) that it will improve the quality of data.

Two commenters asserted that the existing infrastructure is not adequate for testers to comply with the ASTM method. EPA disagrees with these claims. The Source Evaluation Society is currently offering qualification exams in several areas. The commenters may be concerned that the SES website used to state that their exams may not specifically satisfy the requirements of the ASTM Practice (because they were not developed specifically for that purpose). However, SES has updated the wording on their Web site to say that their qualification exams do meet the exam requirement of the ASTM Practice. The Stack Testing Accreditation Council (STAC) also recognizes that not only does the SES program meet the requirements of the ASTM standard—it actually exceeds them. It requires more experience than the ASTM standard and also requires letters of recommendation. Both EPA and STAC accept an SES certification as meeting the external testing and experience requirements of the ASTM Practice.

If an external QSTI test is not available to a company, an internal test may be used to meet the requirements of ASTM D7036–04 until an external test becomes available. EPA is aware of at least one large stack test company that has developed a training module for mercury methods meeting the requirements of the ASTM D7036–04, and has trained and tested their people according to the internal qualification exam provision of ASTM D7036–04. When a third party test becomes

available, this company has indicated that they will re-certify their people according to the requirements of ASTM D7036–04. The Source Evaluation Society is reviewing steps to improve and expand the QSTI examination process.

Four commenters asked EPA to clarify how compliance with ASTM D7036–04 would be determined. Section 6.1.2 in Appendix A of the final rule specifically states that there are two ways an AETB can certify compliance: (1) A certificate of accreditation, or (2) a letter of certification signed by senior management. The latter option is similar to the way major sources certify compliance with their Title V permits. However, AETBs are under much more direct regulatory scrutiny than a Title V source. Every state has a field test observer program. In the case of one large stack testing company, Clean Air Engineering, about half of their compliance tests are directly observed by state regulators. This oversight provides an on-going check of whether an AETB remains in conformance. In co-operation with the New Jersey DEP, a standardized state observer checklist is being developed that will facilitate incorporating state observer assessments into the ASTM process.

EPA expects to treat non-compliance with this standard in the same way it treats noncompliance with any other standard—using its enforcement discretion. EPA does not anticipate invalidating test results because of minor infractions. The proper way to deal with these issues, if either the regulatory authority or the client discovers them, is to notify the AETB that a problem has been found. The AETB is then obligated to initiate a corrective action to address the problem. This becomes part of the AETB's Performance Data required by the Practice. The Agency recommends that the client also ask the AETB to report back on what corrective actions were taken. In the case of serious infractions, EPA may exercise the same authority it has always had to reject the test.

EPA encounters deviations in test methodology routinely in reviewing stack test reports. Minor deviations are noted and reported back to the source but the underlying results are accepted. Major deviations result in a rejection of the test. This situation is no different. This Practice should be treated much like a test method in this regard. Minor deviations may be of the type the commenters cite in their examples. Major deviations may include (for example) not having a Qualified Individual on-site, not having proper calibration records for the equipment used, or failing to follow through with corrective actions when required.

There will undoubtedly be some discussions between EPA, affected sources and AETB's as this program unfolds that will help define the implementation of the Practice. But this is the case with every new rule and standard.

There is always a balance in standard writing between being overly detailed and prescriptive and being too loose and flexible. The stakeholders involved in the consensus process of ASTM determined that the proper balance had been achieved. It is important to keep in mind that ASTM D7036–04 is essentially an international standard that has been used successfully in countries all over the world.

Three commenters requested that EPA provide a 1–2 year transition period after promulgation of the final rule, to allow AETBs sufficient time to conform to ASTM D7036–04. Particular concerns were expressed about the availability of Qualified Individuals (QIs) for Hg emission testing. EPA agrees that a transition period is appropriate, given the testers' relative unfamiliarity with Hg test methods. Therefore, the final rule gives AETBs until January 1, 2009 to comply with ASTM D7036–04.

A number of other comments were received on the proposed AETB certification program. These are addressed in detail in the Response to Comments (RTC) document.

4. Linearity Requirements for Dual-Span Applications

Background

In May 1999, EPA revised the linearity check provisions in Part 75, Appendix A, section 6.2, to exempt SO_2 and NO_X span values of 30 ppm or less from performing linearity checks. Since the May 1999 revisions became effective, some have questioned whether the linearity exemption applies only to ongoing QA or whether it applies also to initial certification. Others have asked whether the exemption applies only to a particular measurement range or to all of the linearity check requirements for a monitoring system. In view of this, EPA proposed to revise Section 6.2 of Appendix A to make it clear that the 30 ppm linearity exemption: (1) Is range-specific; (2) covers both initial certification and ongoing QA; (3) does not remove the requirement to perform linearity checks of the high range (if > 30 ppm) for dual span applications; and (4) does not take away the linearity check requirements for the diluent monitor component of a NO_X-diluent monitoring system.

Summary of Rule Changes

The proposed amendments to Section 6.2 of Appendix A have been finalized, without substantive change. At the request of one commenter, the final rule clarifies that the low-span linearity exemption applies to recertification as well as to initial certification and ongoing QA.

5. Dual Span Applications-Data Validation

Background

EPA proposed to clarify the relationship between the quality-assured (QA) status of the low and high ranges of a gas monitor in a dual-span application. Sections 2.1.1.5(b) and 2.1.2.5(b) of Appendix A have provided instructions for reporting SO_2 and NO_X concentration data when the full-scale range of the monitor is exceeded. For single-range applications, reporting a value of 200 percent of the range has been required when a full-scale exceedance occurs. For dual range applications, if the low range is exceeded, no special reporting has been necessary, provided that the high range is ''available and not out-of-control or out-of-service for any reason''. However, if the high range is ''not able to provide quality-assured data'' during the low-range exceedance, then sources have been required to report the maximum potential concentration (MPC).

Believing that the two phrases used to describe the QA status of the high range during low-scale exceedances, *i.e.*, ''available and not out-of-control or out-of-service for any reason'' and ''not able to provide quality assured data'' to be too general, the Agency proposed to revise these rule texts by defining the QA status of the high range in terms of its most recent calibration error and linearity checks. Provided that both of these QA tests are still ''active'', *i.e.*, their windows of data validation have not expired, the high range would be considered in-control and able to provide quality-assured data. However if either of the tests has expired, data recorded on the high range would be considered invalid until the expired test was repeated and passed. The MPC would be reported until the expired high-range test is redone or until the data return to the low scale. Thus, the proposed revisions would clarify that when the low range is up-to-date on its QA tests but the high range is not, the QA status of each range is evaluated separately.

Summary of Rule Changes

No adverse comments were received. These provisions have been finalized, as proposed.

6. Cycle Time Test-Stability Criteria

Background

The cycle time test described in Section 6.4 of Appendix A is required for the initial certification and recertification of gas monitoring systems, and occasionally as a diagnostic test. The test is designed to determine how long it takes for a monitor to respond to step changes in gas concentration. Two calibration gases (zero- and high-level) are used for the test, which has both an upscale and a downscale component.

Section 6.4 has specified criteria for determining when a stable gas concentration reading has been obtained. The reading is considered stable if it changes by less than 2.0 percent of the span value for 2 minutes or less than 6.0 percent from the average concentration over 6 minutes. These criteria are reasonable when the source effluent concentrations are moderate or high. However, when concentrations are very low, the criteria can become overly stringent and difficult to meet. In view of this, the Agency proposed to add alternative stability criteria to Section 6.4 of Appendix A. By the alternative criteria, an SO_2 or NO_X reading would be considered stable if it changed by no more than 0.5 ppm for 2 minutes or, for a diluent monitor, if it changed by no more than 0.2% CO_2 or O_2 for 2 minutes.

Summary of Rule Changes

Substantive changes have been made to the cycle time test procedure, in response to comments received. The sequence of the test has been reversed, *i.e.*, it now begins with a stable reading of stack emissions and ends with a stable reading of calibration gas concentration (see section 2.6 of the Response to Comments document for further discussion). Commenters were generally supportive of the proposed alternative stability criteria, and these have been incorporated into the final rule. One commenter noted the absence of corresponding alternative stability criteria for Hg monitors. To correct this apparent oversight, the final rule includes an alternative specification of 0.5 μg/m³ for Hg CEMS. The same commenter also expressed concerns about temporal variations in stack gas concentration (particularly for Hg) that can make it difficult to meet the stability criteria, and recommended that the order of the cycle time test be reversed, *i.e.*, begin the test by measuring stack gas emissions and then inject the calibration gas. EPA agrees with this comment and has revised the cycle time test procedure and Figure 6 in Appendix A accordingly. EPA believes this change in the test procedure (which is closer to the way in which the test was originally presented in the January 1993 rule) gives a more accurate indication of the monitor's true response time and will help to prevent ''false positive'' test failures.

EPA has also revised the reporting requirement (in Appendix A § 6.4) for cycle time tests of dual range monitors in light of the transition to the revised XML format. The change requires that cycle time for both ranges of a component be reported separately (consistent with the reporting of other component level tests for CEMS), rather than only reporting the results from the range with the longer cycle time. This change is consistent with the proposed changes that required reporting of certain test at the component level rather than at a system/component level, which overall reduces redundant reporting of test data from shared components. No adverse comments were received on those similar proposed changes. This revision was necessary for consistency with those other proposed changes which EPA is finalizing.

7. System Integrity and Linearity Checks of Hg CEMS

Background

The required certification tests for a Hg CEMS include a 3-level system integrity check, using a NIST-traceable source of oxidized Hg and a 3-level linearity check, using elemental Hg standards. The performance specification for the system integrity check, which is found in paragraph (3)(iii) of Appendix A, Section 3.2, has been that the system measurement error must not exceed 5.0 percent of the span value at any of the three calibration gas levels. However no explanation of how to calculate the measurement error has been provided. EPA proposed to restructure paragraph (3) of Section 3.2, to add the necessary mathematical procedure.

Believing that the performance specification for the linearity check (which is done with elemental Hg) should be at least as stringent as the performance for the system integrity check (which is done with oxidized Hg), the Agency also proposed to make the linearity and system integrity check specifications for Hg monitors the same, *i.e.*, 5.0 percent of the span value, with an alternative specification to 0.6 μg/m³ absolute difference between the reference gas value and the monitor response.

Summary of Rule Changes

In the final rule, the performance specifications for the linearity checks and system integrity checks of Hg monitors have been made the same, but the proposed 5.0 percent of span criterion (with an alternative specification of 0.6 μg/m³) has not been adopted. The commenters did not take issue with the proposal to equalize the performance specifications for the two QA tests, but several commenters objected to the proposed values of the specifications, citing a lack of supporting data to demonstrate that the specifications are achievable. Two commenters favored setting both specifications at the existing values for the linearity check, *i.e.*, 10.0 percent of the reference gas value, with an alternative specification of 1.0 μg/m³.

In response to these comments, EPA analyzed data from two recent field studies in which elemental and oxidized Hg calibration gases were injected into commercially-available Hg CEMS, at different concentration levels (low, mid, high). Based on the results of the data analysis, the Agency has concluded that equalizing the performance specifications for linearity checks and system integrity checks of Hg monitors at 10.0 percent of the reference gas value, with an alternate specification of 0.8 μg/m³ absolute difference is appropriate, and the final rule incorporates these specifications.

A total of 97 data points from the two field studies were analyzed. Data recorded during known periods of probe malfunction and excessive analyzer drift were excluded from the analysis. Eighteen of the 97 data points analyzed were elemental Hg injections, and the rest were oxidized Hg injections. Each gas injection was evaluated on a pass/fail basis against six candidate sets of performance specifications. These were: (1) The proposed performance specifications, *i.e.*, 5.0 percent of span, with an alternative specification of 0.6 μg/m³; (2) the existing linearity specifications, *i.e.*, 10.0 percent of the reference gas value, with alternative specification of 1.0 μ/m³; (3) the existing system integrity specification, *i.e.*, 5.0 percent of span, with no alternative specification; (4) 5.0 percent of span, with an alternative specification of 0.8 μg/m³ ; (5) 5.0 percent of span, with an alternative specification of 1.0 μg/m³; and (6) 10.0 percent of the reference gas value, with alternative specification of 0.8 μg/m³. For each set of performance specifications, the pass rate of the 97 gas

injections was determined. The two highest pass rates (96.9% and 95.9%) were attained with sets (2) and (5), respectively, which have the widest alternative specification of 1.0 μg/m³. Similarly high pass rates (93.8% and 94.8%) were also attained with sets (4) and (6), both of which have an alternative specification of 0.8 μg/m³. The lowest pass rates (85.5% and 75.3%) were attained with sets (1) and (3), the proposed performance specifications and the existing system integrity check specification.

From these results, EPA concludes, on the one hand, that both the proposed performance specifications (set 1) and existing system integrity check specifications (set 3) may be too stringent. On the other hand, very high pass rates were achieved with the four sets having the wider alternate specifications of 1.0 μg/m³ and 0.8 μg/m³, *i.e.*, sets (2), (5), (4), and (6). For these four sets, it seems to make little or no difference whether the main specification is 5.0 percent of span or 10.0 percent of the reference gas value. In view of these considerations, EPA has selected the main specification for the system integrity and linearity checks to be 10.0 percent of the reference gas value, and the alternative specification to be the more stringent value of 0.8 μg/m³. These values have been incorporated into paragraph (3) of Section 3.2 in Appendix A.

8. Correction of Hg Calibration Gas Concentrations for Moisture

Background

When calibration error tests and linearity checks of SO_2, NO_X, and diluent gas monitors are performed, EPA protocol gases are used. The protocol gases are essentially moisture-free. However, when mercury monitors are calibrated, moisture is sometimes added to the calibration gas. This creates a potential source of error in the calculations. In view of this, EPA proposed to revise the calibration error procedures in section 6.3.1 of Appendix A, to require that when moisture is added to the Hg calibration gas, the moisture content of the gas must be accounted for. The proposed revisions would also require the calibration gas concentration to be converted to a dry basis for purposes of performing the calibration error calculations.

The Agency also proposed to add parallel language to Section 6.2 of Appendix A, in a new paragraph ''(h)'', to address this issue for the linearity checks and system integrity checks of Hg monitors.

Summary of Rule Changes

No comments were received on the proposal. Therefore, the provisions have been finalized, but there is one notable change. The proposed rule inappropriately limited the requirement to account for added moisture in the calibration gas to dry-basis Hg CEMS. In the final rule text, this restriction has been removed. This is simply a technical correction of a misstatement in the proposal.

9. Correction of Cross-References

Background

EPA proposed to correct a number of cross-references in Appendix A, Sections 6.2(g), 6.5.6(b)(3) and 6.5.6.3. Regarding the system integrity checks of Hg monitors, Section 6.2(g) of Appendix A incorrectly only referred to Section 2.6 of Appendix B, which only describes weekly, single-level system integrity checks. The proposed revisions would also refer to Sections 2.1.1 and 2.2.1 of Appendix B, which describe the 3-level system integrity checks. Finally, corrections to sections 6.5.6(b)(3) and 6.5.6.3 of Appendix A were proposed, changing references to Section 3.2 of Performance Specification No. 2 (PS2) to Section 8.1.3, of PS2.

Summary of Rule Changes

No adverse comments were received. These corrections have been finalized, as proposed.

I. Appendix B

1. 3-Load Flow RATA Frequency and RATA Grace Period

Background

On May 26, 1999, EPA revised Appendix B of Part 75, to reduce the required frequency of 3-load flow RATAs from annually to ''at least once every 5 consecutive calendar years''. As written, this rule provision actually allows more than five years (20 calendar quarters) to elapse between 3-load flow RATAs. For instance, if successive 3-load flow RATAs are performed in the 1st quarter of 2002 and in the 4th quarter of 2007, this satisfies the ''once every 5 consecutive calendar years'' requirement, but there would be 23 calendar quarters between the two tests.

In light of this, EPA proposed to revise Section 2.3.1.3(c)(4) of Appendix B, to require 3-load flow RATAs to be done at least once every 20 calendar quarters. This is consistent with both the other 5-year testing requirements in Part 75 (i.e., for Appendix E and LME units) and the maximum allowable interval between successive accuracy tests of Appendix D fuel flowmeters.

EPA also proposed to revise the RATA grace period provisions in Section 2.3.3, by removing the method of determining the deadline for the next RATA after a grace period test from paragraph (c) of Section 2.3.3 and replacing it with a different method described in new paragraph (d).

Paragraph (d) proposed a change to the methodology for determining RATA deadlines, without changing the end result. The intent of paragraph (c) in Section 2.3.3 had always been for the source to return to its original RATA schedule following a grace period test, in order to prevent the grace period provisions from being abused. However, for infrequently operated units (e.g., many combustion turbines), the grace period sometimes spans across many calendar quarters, which effectively eliminates the possibility of establishing a meaningful relationship between the original RATA due date and the deadline for the next test.

In view of these considerations, EPA proposed a simpler methodology for determining RATA deadlines that will work for both base load units and combustion turbines that seldom operate. The deadline for the next RATA following a grace period test would be two QA operating quarters after the quarter of the test, if the RATA results trigger a semiannual test frequency, and three QA operating quarters after the quarter of the test if the RATA qualifies for an annual test frequency. As proposed, there was one exception to these rules. Regardless of the number of QA operating quarters that have elapsed following the grace period test, the maximum allowable interval between a grace period RATA and the next RATA would be eight calendar quarters. This is consistent with Section 2.3.1.1(a) of Appendix B.

Finally, EPA proposed to amend paragraph (c) of Section 2.3.3, to state that when a RATA is performed after the expiration of a grace period, the ''clock'' is reset, and the deadline for the next RATA is determined in the usual manner, *i.e.*, the next test would be due within two QA operating quarters (for semiannual frequency) or four QA operating quarters (for annual frequency), not to exceed eight calendar quarters.

Summary of Rule Changes

Commenters were supportive of the proposed amendments to the RATA grace period provisions, and no comments were received on the proposal to determine 3-load flow RATA deadlines on a calendar quarter basis. Therefore, these provisions have been finalized, as proposed.

2. RATA Requirement for Shared Components

Background

EPA proposed to amend paragraph (g) in section 2.3.2 of Appendix B, to specify the consequences of a failed RATA, in the case where a particular NO_X pollutant concentration monitor is a component of both a NO_X concentration monitoring system and a NO_X-diluent monitoring system. In such cases, the Agency proposed that if the NO_X concentration system RATA is failed, both the NO_X concentration monitoring system and the associated NO_X-diluent monitoring system would be considered out-of-control, and successful RATAs of both monitoring systems would be required to get them back in-control.

Summary of Rule Changes

No adverse comments were received. This amendment has been finalized, as proposed.

3. AETB Requirements

Background

EPA proposed to amend Appendix B by adding a new Section, 1.1.4, to require that an Air Emissions Testing Body (AETB) that performs emission testing or RATAs for on-going quality-assurance under Part 75 must conform to ASTM D7036–04.

Summary of Rule Changes

No adverse comments were received. This provision has been finalized, as proposed.

4. Calibration Error Tests and Linearity Checks-Dual Range Applications

Background

EPA proposed to revise Sections 2.1.1, 2.1.1.2, 2.1.5.1 and 2.2.3(e) of Appendix B, to clarify the data validation requirements for daily calibration error tests and linearity checks of gas monitors when two span values and two measurement ranges are required for a particular parameter (*e.g.*, SO_2 or NO_X).

The proposed revisions to Section 2.1.1 of Appendix B would require that ''sufficient'' calibration error tests be performed on the low and high monitor ranges to validate the data recorded on each range, in accordance with Section 2.1.5 of Appendix B. EPA also proposed to add a new paragraph, (3), to Section 2.1.5.1 of Appendix B, to clarify how the QA status of the low and high ranges is determined when: (a) a calibration error test on one of the ranges is failed; or (b) the most recent calibration error test of one of the ranges has expired. Under proposed paragraph (3), when separate analyzers are used for the two ranges, a failed or expired calibration error test on one of the ranges would not affect the QA status of the other range. For a dual-range analyzer (*i.e.*, a single analyzer with two scales), a failed calibration error test on either range would result in an out-of-control period, and data from the monitor would remain invalid until corrective actions are taken, followed by successful ''hands-off'' calibrations of both ranges. However, if the most recent calibration error test on one range of a dual-range analyzer was successful, but its data validation window expires, this would have no effect on the QA status of the other range.

Further, the Agency proposed to amend Section 2.2.3(e) of Appendix B to make it clear that ''hands-off'' linearity checks of both ranges of a dual-range analyzer are required whenever a linearity check on either range fails or is aborted (unless, of course, a particular range is exempted from linearity checks under Section 6.2 of Appendix A).

Summary of Rule Changes

These provisions have been finalized, as proposed. Two commenters did not understand why failure of a calibration error test or a linearity check on one scale of a dual-range analyzer should invalidate data on both ranges, and asked for EPA to more fully explain the technical basis for this requirement.

The requirement to perform calibration error tests or linearity checks on both scales of a dual-range analyzer to resolve an out-of-control period does not reflect a change in Agency policy. Rather, EPA's proposal intended to clarify the existing requirement that each range of a dual-range monitor must be known to be in-control in order to validate data from the monitor.

The final rule allows data to be considered valid from a particular measurement range that has passed a calibration error check when the calibration error test for the other measurement range has expired. In such instances, since there is no indication that the monitor is not functioning properly, but there is evidence that the measurement range being used is properly calibrated, EPA is allowing that range to be considered quality assured. However, whenever a monitor fails any required daily, quarterly, semi-annual or annual quality assurance test, regardless of range, EPA maintains that data from that monitor must be considered invalid until the required quality assurance tests are passed. A failed test on either range of a dual range monitor indicates a problem with the monitor's ability to accurately measure emissions. While it is possible that in some instances, the problem causing the failure of a test on one range does not affect the accuracy of the monitor's measurements on the other range, it is far from certain. Therefore, the Agency's firm position is that whenever a calibration error test or linearity check is failed on either measurement scale of a dual-range analyzer, it is necessary to calibrate both ranges following corrective actions (which usually involve adjustments to the monitor), to verify that the monitor is back in-control and is able to generate quality-assured data on both ranges.

5. Off-Line Calibration Error Tests

Background

Section 2.1.1.2 of Appendix B allows the owner or operator to make limited use of off-line calibration error tests to validate data if an off-line calibration demonstration test is performed and passed. If the off-line calibration error demonstration is successful, then off-line calibrations may be used to validate up to 26 unit operating hours of data before an on-line calibration error test is required.

The off-line calibration provisions in Appendix B have not been well-understood by many affected sources. Through the years, EPA has received numerous requests for a more detailed explanation and/or examples of how to apply these rule provisions. In view of this, the Agency proposed to revise Sections 2.1.1.2 and 2.1.5.1 of Appendix B to clarify the data validation rules for off-line calibration error tests.

EPA proposed to revise paragraph (2) in Section 2.1.1.2 to state that sources may make limited use of off-line calibrations if the off-line calibration demonstration has been performed and passed. The proposed changes to paragraph (2) of Section 2.1.5.1 would explain what ''limited use'' of off-line calibrations means. Off-line calibrations could be used to validate up to 26 consecutive unit operating hours of data before an on-line test is required. Each individual off-line calibration would be valid only for 26 clock hours, and if the sequence of consecutive operating hours validated by off-line calibrations is broken before reaching the 26th consecutive unit operating hour, data from the monitor would become invalid until an on-line calibration is performed and passed.

Summary of Rule Changes

Numerous commenters objected to the proposed revisions to Section 2.1.5.1 of Appendix B. The commenters found the proposed rule language to be confusing

rather than clarifying, and several of them asserted that EPA appeared to be placing new restrictions on the use of off-line calibration error tests.

After careful consideration of these comments, EPA agrees that the proposed rule language, particularly the term ''sequence of consecutive unit operating hours'' can be misinterpreted. However, the Agency's intent was (and is) simply to clarify the existing procedures for using off-line calibrations to validate CEMS data. That is, a source desiring to use the off-line calibration provisions in paragraph (2) of Appendix B, section 2.1.5.1 must first pass the off-line calibration demonstration described in section 2.1.1.2. After successfully completing this demonstration, off-line calibrations may be used on a limited basis for data validation. In particular, off-line calibrations may be used to validate data for up to 26 consecutive unit operating hours following a passed on-line calibration error test.

The term ''consecutive unit operating hours'' does not mean consecutive clock hours. For example, two consecutive unit operating hours could be separated by several hours, days, weeks, etc., due to a unit outage. Each off-line calibration error test has the same prospective, 26 clock hour window of data validation as an on-line calibration error test.

Therefore, for a source that has passed the off-line calibration demonstration, EPA considers the data for a particular operating hour to be valid if there is: (1) A passed on-line calibration within the 26 *unit operating* hours preceding that operating hour; and (2) a passed off-line calibration within the 26 *clock* hours immediately preceding that operating hour. The Agency has revised the proposed rule language to clarify these requirements. For each hour of unit operation, these criteria will be used to evaluate each monitoring system's control status with respect to daily calibrations.

6. Weekly System Integrity Check—Data Validation

Background

For a Hg CEMS that is equipped with a converter and that uses elemental Hg for daily calibrations, Section 2.6 of Part 75, Appendix B requires a weekly system integrity check, using a NIST-traceable source of oxidized Hg. This ''weekly'' test is required once every 168 unit operating hours. However, due to an apparent oversight, Section 2.6 did not explain the consequences of either failing the test or failing to perform the test on schedule. In view of this, EPA proposed to add the following data validation rules for the weekly system integrity check to Section 2.6 of Appendix B: (a) If the test fails, it would trigger an out-of-control period until a subsequent system integrity check is passed; and (b) if the test is not performed within 168 unit operating hours of the previous successful system integrity check, data from the CEMS would become invalid, starting with the 169th unit operating hour and continuing until a system integrity check is passed.

The Agency also proposed to correct a typographical error in Section 2.6 of Appendix B. The performance specification for the weekly system integrity check was incorrectly referenced as Section 3.2 (c)(3) of Appendix A. The correct citation is Appendix A, Section 3.2, paragraph (3)(iii).

Summary of Rule Changes

The revision has been finalized as proposed. Several commenters objected to the proposed data validation rules for weekly system integrity checks of Hg CEMS. Commenters expressed concern that the specified test frequency, i.e., once every 168 unit operating hours, will cause scheduling difficulties, due to the limited availability of qualified technicians and other factors. The commenters requested that EPA provide a grace period of 72 to 96 hours for this QA test, to minimize the possibility of data loss.

EPA does not agree with the commenters' assertions that the 168 operating hour requirement will be difficult to implement and that a grace period should be added. The number of operating hours since the last weekly system integrity check can (and should) be tracked by the data acquisition and handling system (DAHS). An alarm or prompt could be activated when the deadline for the next test is near (e.g., when 120 or 144 operating hours have elapsed since the last test).

EPA favors basing the interval between successive tests on operating hours rather than clock hours in a week, primarily for reasons of simplicity. The Agency acknowledges that this is distinctly different from the way in which the deadlines for RATAs and linearity checks are determined. For a RATA or linearity check, the deadline is always at the end of a calendar quarter. Grace periods are provided for these tests because the deadlines can pass while the unit is either off-line or experiencing operational abnormalities that prevent the monitors from being tested on time. Also, a limited number of RATA deadline extensions and linearity check exemptions are provided for ''non-QA operating quarters'', i.e., calendar quarters in which the unit operates for < 168 hours.

However, the required frequency for the system integrity checks of a Hg CEMS is weekly, not quarterly. This is the only weekly QA test required by Part 75. Therefore, the existing ''QA operating quarter'' model and grace period scheme cannot be directly applied to the system integrity check. A new concept, perhaps a ''QA operating week'' would have to be introduced and an appropriate grace period determined. EPA considered this approach and decided against it, believing that it would unnecessarily complicate the process of QA status tracking for Hg CEMS.

The Agency believes that if the DAHS is programmed to track the number of unit operating hours since the last system integrity check and if an alert is provided to let plant personnel know when the test deadline is approaching, there will seldom, if ever be a missed test. Furthermore, the Agency believes that as experience is gained with Hg monitors, it may be possible to automate the weekly system integrity check so that during the 168th hour of operation since the last system integrity check, the check is automatically initiated by the DAHS computer system or other appropriate programmable logic controller (PLC) systems. Such automation would further reduce the probability of a missed test.

7. Correction of Hg Units of Measure—Figure 2

Background

EPA proposed to correct a minor error in the units of measure for Hg concentration in Figure 2 of Appendix B, changing the units of micrograms per dry standard cubic meter (μg/dscm) to micrograms per standard cubic meter (μg/scm). This change was proposed because not all Hg monitoring systems measure Hg concentration on a dry basis.

Summary of Rule Changes

No adverse comments were received. The proposed correction to Figure 2 has been made.

J. Appendix D

1. Update of Incorporation by Reference

Background

As previously noted, EPA proposed to update the list of test methods, sampling and analysis procedures, and other items that are incorporated by reference in § 75.6. As such, the proposed rule

included corresponding updates to the references in Appendix D.

EPA also proposed to add to Section 2.1.5.1 of Appendix D, the American Petroleum Institute's (API) Manual of Petroleum Measurement Standards Chapter 22—Testing Protocol: Section 2—Differential Pressure Flow Measurement Devices (First Edition, August 2005) as a new standard procedure for verifying flowmeter accuracy.

Summary of Rule Changes

These provisions have been finalized, as proposed. Note that in response to a comment, EPA has also incorporated by reference ASTM D5453–06, ''Standard Test Method for Determination of Total Sulfur in Light Hydrocarbons, Spark Ignition Engine Fuel, Diesel Engine Fuel, and Engine Oil by Ultraviolet Fluorescence'' [1], and has added ASTM D5453–06 to the list of acceptable oil sampling methods in Section 2.2.5 of Appendix D (see section 2.7 of the Response to Comments document for further discussion). In addition, the equation for Hourly SO_2 Mass Emissions from the Combustion of all Fuels in Appendix D, section 3.5.1 has been revised to be consistent with the new XLM format. This change is considered to be insignificant and was made to be consistent with the proposed changes to harmonize the units of measure for reporting hourly mass emissions.

2. Pipeline Natural Gas—Method of Qualification and Monthly GCV Values

Background

For a unit which combusts a fuel that meets the definition of ''pipeline natural gas'' (PNG) in § 72.2, Section 2.3.1.1 of Appendix D allows the owner or operator to estimate the unit's SO_2 mass emissions using a default SO_2 emission rate of 0.0006 lb/mmBtu. To qualify to use this SO_2 emission rate, the owner or operator must document that the natural gas has a total sulfur content of 0.5 grains per 100 standard cubic foot or less. Section 2.3.1.4 describes three ways to initially demonstrate that the gas meets this total sulfur requirement: (1) Based on the gas quality characteristics specified in a purchase contract, tariff sheet, or pipeline transportation contract; or (2) based on historical fuel sampling data from the previous 12 months; or (3) based on at least one representative sample of the gas, if the requirements of (1) or (2) cannot be met. When fuel sampling data are used to qualify, the rule has required that each individual sample result must meet the total sulfur limit. Once a fuel has qualified as pipeline natural gas, Section 2.3.1.4(e) of Appendix D requires annual sampling of the total sulfur content to demonstrate that the fuel still meets the definition of PNG. At least one sample per year must be taken and if multiple samples are taken, the rule has required each one to meet the 0.5 gr/100 scf total sulfur limit.

Many suppliers of natural gas regularly sample the total sulfur content of the gas (in many cases, daily) and provide that data to their customers upon request. Sources desiring to use this data to meet the initial or ongoing total sulfur sampling requirements of Appendix D have asked whether the gas would be disqualified from using the 0.0006 lb/mmBtu SO_2 emission rate if the total sulfur content of one of these daily samples exceeded 0.5 gr/100 scf. EPA has been handling these requests individually, on a case-by-case basis. However, the Agency believes it will be more efficient to address the issue through rulemaking. In view of this, amendments to Sections 2.3.1.4(a)(2) and (e) of Appendix D were proposed.

For the initial documentation that the gas meets the 0.5 gr/100 scf total sulfur limit, the proposed revisions to Section 2.3.1.4(a)(2) would allow sources with at least 100 total sulfur samples from the previous 12 months to reduce the data to monthly averages. Then, if all monthly averages meet the 0.5 gr/100 scf limit, the fuel would qualify as pipeline natural gas, and the source could use the 0.0006 lb/mmBtu default SO_2 emission rate. Alternatively, if at least 98 percent of the 100 (or more) samples from the previous 12 months have a total sulfur content of 0.5 gr/100 scf or less, the fuel would qualify as pipeline natural gas.

The proposed revisions to Section 2.3.1.4(e) would allow this same calculation methodology to be used for the annual total sulfur sampling requirement. That is, each year, if the results of at least 100 total sulfur samples from the past 12 months are obtained, the data could either be reduced to monthly averages, or the percentage of the samples that meet the 0.5 gr/100 scf limit could be determined.

EPA also proposed to clarify the gross calorific value (GCV) sampling requirements for pipeline natural gas in Section 2.3.4.1 of Appendix D. The current rule requires monthly GCV sampling for PNG. However, Section 2.3.4.1 refers only to the ''monthly sample'' (singular), whereas affected sources may collect and analyze multiple GCV samples each month, or may receive the results of multiple GCV samples from the fuel supplier each month. In view of this, the Agency proposed to revise Section 2.3.4.1 to require that the monthly average GCV value be used for Part 75 reporting, for any month in which multiple samples are taken and analyzed. To implement this provision in the case where the owner or operator has elected to use the actual monthly GCV value in the emission calculations, revisions to Section 2.3.7(c) of Appendix D were proposed, requiring the monthly average GCV value to be applied starting from the latest date of any of the individual GCV samples used to calculate the monthly average. In the case where an assumed GCV value is used in the calculations (i.e., either a contract value or the highest monthly average from the previous year), the assumed value would continue to be used unless superseded by a higher monthly average GCV value.

Summary of Rule Changes

The provisions pertaining to documentation that a particular gaseous fuel qualifies as pipeline natural gas have been finalized, with only minor editorial changes. Regarding the proposed requirement to average the results of all GCV samples of natural gas taken in each calendar month, one commenter asked whether the monthly average would be used to back-calculate the heat input values for each day in that month.

The proposed revisions to Section 2.3.7(c) of Appendix D specified that when the option to use the actual monthly GCV in the calculations is selected and multiple samples are taken, each monthly average GCV would be applied prospectively, starting on the date of the last sample taken during the month. However, in light of the commenter's question, EPA has reconsidered this approach. The final rule requires instead that each monthly GCV value be applied to every day in that month. The Agency believes that this approach provides a more representative estimate of the unit's true monthly heat input.

Note that the text of paragraph (b)(2) in section 2.3.7 has also been modified to address the new alternative methodology for making annual assessments of the sulfur content of natural gas.

3. Requirement to Split Oil Samples

Background

For affected units that combust fuel oil and use the Appendix D

[1] ASTM D5453–05 is no longer available. EPA is thus adding ASTM D5453–06, the version currently available. EPA considers this a minor ministerial correction.

methodology to quantify SO_2 mass emissions and/or unit heat input, Section 2.2 of Appendix D requires the owner or operator to perform periodic sampling of the sulfur content, gross calorific value and density of the oil (as applicable). Section 2.2.5 of Appendix D requires each oil sample to be split and a portion (at least 200 cc) of it to be maintained for at least 90 days after the end of the allowance accounting period.

The requirement to split and maintain a portion of each oil sample has been in Appendix D since it was first promulgated on January 11, 1993. At that time, on-site fuel oil sampling was required on every day that the unit combusted oil. Later, on May 17, 1995, an option to sample each shipment upon delivery was added for diesel fuel. Then, on May 26, 1999, the four basic oil sampling options in the current rule were put in place. However, the requirement to split and maintain a portion of each sample has remained unchanged through all of these rulemakings.

Believing that the requirement to split and maintain oil samples should only apply to samples that are taken at the affected facility, EPA proposed to revise Section 2.2.5 of Appendix D to limit this requirement to samples that are taken on-site. If this proposed amendment were finalized, sources electing to sample each fuel lot would no longer be required to split and maintain oil samples in cases where the samples are taken off-site, from the fuel supplier's storage container.

Summary of Rule Changes

No adverse comments were received. This provision has been finalized, as proposed.

K. Appendix E

1. AETB Requirements

Background

EPA proposed to revise Section 2.1 of Appendix E to require that any Air Emissions Testing Body (AETB) performing emission measurements to develop an Appendix E correlation curve or to derive a default emission rate for a LME unit, would have to conform to ASTM D7036–04.

Summary of Rule Changes

No adverse comments were received. This provision has been finalized, as proposed.

2. Reporting Data When the Correlation Curve Expires

Background

For oil and gas-fired peaking units using the Appendix E methodology to estimate NO_X emissions, the owner or operator is required, for each fuel type, to perform four-load emission testing for initial certification in order to develop a correlation curve of NO_X emission rate versus heat input rate. Each correlation curve is programmed into the data acquisition and handling system (DAHS), and retesting is required every five years (20 calendar quarters) to develop a new curve.

If the 20 calendar quarter test deadline passes without a retest having been performed, the previous correlation curve expires and is no longer valid. However, the appropriate missing data procedure to follow when a correlation curve expires has been conspicuously absent from Section 2.5 of Appendix E. To address this deficiency, EPA proposed to add a new Section, 2.5.2.4, to Appendix E, requiring the fuel-specific maximum potential NO_X emission rate (MER) to be reported, from the date and hour in which a baseline correlation curve expires until a new correlation curve is generated.

Summary of Rule Changes

No adverse comments were received. This provision has been finalized, as proposed.

L. Appendix F

1. NO_X Mass Calculations

Background

EPA proposed to revise the manner in which NO_X mass data are collected under the XML format that will be required in 2009 as part of EPA's effort to re-engineer the Agency's data collection systems. To achieve this, the hourly NO_X mass emission rate (lb/hr) would be reported instead of hourly NO_X mass emission (lb), when the source transitions from EDR reporting format to the XML format.

To effect this, Equations F–24, and F–27 in Appendix F of Part 75 would have to be modified and Equation F–26 removed. However, since the current EDR reporting format will continue to be supported through 2008, these equations must remain in the rule until the transition to XML is complete. Therefore, EPA proposed to revise Section 8 of Appendix F by adding Equations F–24a for the reporting of hourly NO_X mass emission rate (lb/hr) and Equation F–27a , for the calculation of cumulative NO_X mass emissions. In 2009, the use of Equations F–24a and F–27a would become mandatory for all sources and Equations F–24 and F–27 would no longer be applicable.

EPA also proposed to revise Section 8.2 of Appendix F, by splitting it into two subsections, 8.2.1 and 8.2.2. Section 8.2 had described a procedure for calculating the NO_X mass emission rate in lb/hr, when NO_X mass emissions are determined using a NO_X concentration monitoring system and a flow monitor. However, Section 8.2 simply cross-referenced other parts of the rule, rather than showing the actual equations used. To correct this, the Agency proposed to add Equation F–26a to subsection 8.2.1 and Equation F–26b to subsection 8.2.2, clearly showing how the NO_X mass emission rate is calculated on a wet and dry basis, and to renumber Equation F–26 in Section 8.3 as Equation F–26c. Proposed Equations F–26a and F–26b have been used since 2002 by sources in the NO_X Budget Program, and the equations have been represented in the EDR reporting instructions as Equations N–1 and N–2, respectively.

Summary of Rule Changes

No adverse comments were received. These provisions have been finalized, as proposed.

2. Use of the Diluent Cap

Background

EPA proposed to restrict the use of the diluent cap to NO_X emission rate determinations. The original purpose for allowing the diluent cap to be used was to keep calculated NO_X emission rates from approaching infinity during periods of unit startup and shutdown, when the diluent gas (CO_2 or O_2) concentration is close to the level in the ambient air. However, since 1999, Part 75 has allowed the diluent cap to be used for heat input rate calculations, CO_2 mass emission calculations, and calculation of hourly CO_2 concentration from measured O_2 concentrations, in addition to being used for NO_X emission rate. Sources have been allowed to use the cap value for some of these calculations and not others, which greatly complicates the data collection process. EPA has also found that using the diluent cap for other parameters besides NO_X emission rate always leads to over-reporting of these parameters, which is clearly contrary to the intended purpose of the diluent cap. Therefore, the Agency proposed to remove all of the references in Sections 4 and 5 of Appendix F that allow the diluent cap to be used for other parameters besides NO_X emission rate.

Summary of Rule Changes

No adverse comments were received. These provisions have been finalized, as proposed.

3. Negative Emission Values

Background

EPA proposed to provide special reporting instructions to account for situations where the equations prescribed by the rule yield negative values. First, when Equation 19–3 or 19–5 (from EPA Method 19 in 40 CFR Part 60, Appendix A) is used to calculate NO_X emission rate, modified forms of these equations, designated as Equations 19–3D and 19–5D, would be used whenever the diluent cap is applied. Second, for any hour where Equation F–14b results in a negative hourly average CO_2 value, EPA proposed to require 0.0% CO_2 to be reported as the average CO_2 value for that hour. Third, the Agency proposed to require a default heat input rate value of 1 mmBtu/hr to be reported for any hour in which Equation F–17 results in a negative hourly heat input rate. These changes would be accomplished by modifying Sections, 3.3.4, 4.4.1, and 5.2.3 of Appendix F.

Summary of Rule Changes

These provisions have been finalized, with one notable change. The final rule will require a default heat input rate value of 1 mmBtu/hr to be reported for any hour in which Equation F–17 results in a hourly heat input rate that is less than or equal to zero.

4. Calculation of Stack Gas Moisture Content

Background

EPA proposed to add Equation F–31 to a new Section 10 in Appendix F, to be used to calculate stack gas moisture values from wet and dry oxygen measurements, as described in Appendix A, Section 6.5.7(a). Sources have been using this equation for many years and it has been represented in the EDR reporting instructions as Equation M–1.

Summary of Rule Changes

No adverse comments were received. This provision has been finalized, as proposed.

5. Site-Specific F-Factors (Single Fuel)

Background

For units that use CEMS to measure the NO_X emission rate in lb/mmBtu and/or the unit heat input rate in mmBtu/hr, an equation from Appendix F of Part 75 or from Method 19 of 40 CFR Part 60 is required to convert the raw CEMS data into the proper units of measure. Each of these equations contains an F-factor, which represents either the total volume of flue gas or the volume of CO_2 generated per million Btu of heat input. The F-factor is fuel-specific.

Sections 3.3.5 and 3.3.6 of Appendix F allow the owner or operator to use either a default F-factor from Table 1 in Appendix F, or use Equation F–7a or F–7b in Appendix F to calculate a site-specific F-factor, based on the composition of the fuel. However, Appendix F has never specified how much fuel sampling data is required to develop a site-specific F-factor or how often the F-factor must be updated.

To address this issue, EPA proposed to revise the introductory text of Appendix F, Section 3.3.6 to require each site-specific F-factor to be based on a minimum of 9 samples of the fuel. Fuel samples taken during the 9 runs of an annual RATA would be acceptable for this purpose. Further, re-determination of the F-factor would be required at least annually, and the value from the most recent determination would be used in the emission calculations.

Summary of Rule Changes

No adverse comments were received. These provisions have been finalized, as proposed.

6. Prorated F-Factors

Background

For affected units that co-fire combinations of fossil fuels or fossil fuels and wood residue and that use CEMS to monitor the NO_X emission rate or unit heat input rate, Section 3.3.6.4 of Appendix F has required a prorated F-factor to be used in the emission calculations. The prorated F-factor is calculated using Equation F–8 in Appendix F. In applying Equation F–8, the F-factor for each type of fuel is weighted according to the fraction of the total heat input contributed by the fuel. However, Equation F–8 has never specified how the total unit heat input and the fraction of the heat input contributed by each fuel are determined. Data from the CEMS cannot be used for this purpose because the prorated F-factor must be known before the unit heat input rate can be calculated.

To correct this situation, EPA proposed to revise the definition of ''X_i'' (the fraction of the total heat input derived from each fuel) in the Equation F–8 nomenclature. The proposed revision would require sources to determine X_i from the best available information on the quantity of each fuel combusted and its GCV value over a specified time period. The value of X_i would be updated periodically, either hourly, daily, weekly, or monthly, and the prorated F-factor used in the emission calculations would be derived from the X_i values from the most recent update. The owner or operator would be required to document in the hard copy portion of the monitoring plan the method used to determine the X_i values.

Summary of Rule Changes

The revisions to Section 3.3.6.4 of Appendix F regarding the prorating of F-factors have been finalized, with only minor changes. However, several commenters requested that EPA consider allowing the use of the ''worst-case'' (i.e., highest) F-factor as an alternative to prorating, when combinations of fuels are co-fired. After careful consideration of these comments, EPA is persuaded by the commenters' arguments in favor of this option and has decided to incorporate this suggestion into the final rule (see section 2.4 of the Response to Comments document). New Section 3.3.6.5 of Appendix F allows sources that burn combinations of fuels listed in Table 1 of Appendix F to use the highest (''worst-case'') F-factor for any unit operating hour, in lieu of prorating the F-factor. Note that in view of the revisions to Section 3.3.6.4, Agency has deemed it necessary to modify the language in Section 3.3.6.3 of Appendix F. Administrative approval of the F-factor is no longer required when combinations of fossil fuels with wood or bark are combusted, since F-factors for these fuels are listed in Table 1. Rather, revised Section 3.3.6.3 requires Administrative approval of the F-factor only when a fuel not listed in Table 1 is co-fired with a fuel (or fuels) listed in the Table.

7. Default F-Factors

Background

In recent years, petroleum coke and tires have begun to be used as primary or secondary fuels by a number of affected sources. In view of this, EPA proposed to add default F-factors for petroleum coke and tire-derived fuels to Table 1 in Section 3.3.5 of Appendix F. The proposed values were 9,832 dscf/mmBtu for F_d and 1,853 scf CO_2/mmBtu for F_c for petroleum coke and 10,261 dscf/mmBtu for F_d and 1,803 scf CO_2/mmBtu for F_c for tire-derived fuels. The Agency also proposed F-factors of 9,819 dscf/mmBtu (for F_d) and 1,840 scf CO_2/mmBtu (for F_c) for sub-bituminous coal. All of the proposed F-factors were calculated using Equations F–7a and F–7b and representative composition and gross calorific value (GCV) data for each fuel.

Summary of Rule Changes

These provisions have been finalized, with minor editorial changes. One commenter recommended that the proposed F-factor values be rounded off to the nearest multiple of 10, to be consistent with the other values in Table 1. EPA agrees with this comment and has rounded off the F-factors accordingly.

8. Revisions to Equation F–23

Background

Consistent with the proposed changes to § 75.11(e), expanding the applicability of Equation F–23, EPA proposed to amend Section 7 of Appendix F (introductory text), and the Equation F–23 nomenclature.

Summary of Rule Changes

No adverse comments were received. These provisions have been finalized, as proposed.

M. Appendix G

Background

Consistent with the changes to other parts of the rule, EPA proposed to update the current ASTM standards listed in Sections 2.1.2, 2.2.1, and 2.2.2, of Appendix G, citing the newer versions.

Summary of Rule Changes

No adverse comments were received. These provisions have been finalized, as proposed.

N. Appendix K

Background

EPA proposed to addresses several issues regarding the use of sorbent trap monitoring systems for the measurement and reporting of Hg mass emissions. When this monitoring option is selected, paired sorbent traps are required to measure the effluent Hg concentration. If the two Hg concentrations measured by the paired traps meet the required relative deviation (RD) specification in Appendix K of Part 75, and if each trap individually meets certain other QA requirements of Appendix K, then the two Hg concentrations are averaged arithmetically and the average value is used to determine the Hg mass emissions in each hour of the data collection period. However, in cases where either or both of the traps fails to meet the acceptance criteria, § 75.15(h) and Table K–1 in Appendix K specify consequences of varying severity. In the months following promulgation of these rule provisions, EPA revisited them and concluded that some of the consequences were too lenient and others unnecessarily severe. The Agency therefore proposed to revise them to make them more consistent and equitable.

Whenever one of the paired traps is accidentally lost, damaged, or broken and cannot be analyzed, § 75.15(h) has allowed the owner or operator to use the remaining trap to determine the Hg concentration for the data collection period, provided that the remaining trap meets all of the QA requirements of Appendix K. But no adjustment of the data has been required to compensate for the loss of one of the samples. In view of this, EPA proposed to revise § 75.15(h) to require that the Hg concentration measured by the remaining valid trap be multiplied by a ''single trap adjustment factor'' (STAF) of 1.222. The STAF represents the maximum amount by which the Hg concentration from the lost, damaged or broken trap could have exceeded the concentration measured by the valid trap and still met the 10% RD specification.

The Agency also proposed to revise Table K–1 in Appendix K, to extend the use of the STAF to cases where one of the paired sorbent traps either: (a) fails a post-test leak check; (b) has excessive breakthrough in the second section; or (c) is unable to meet the required percent recovery of the third section elemental Hg spike. In all three of these cases, provided that the other trap meets all Appendix K requirements, rather than invalidating the sorbent trap system data for the entire collection period, the Hg concentration measured by the valid trap, multiplied by the STAF, could be used for Part 75 reporting.

Section 7.2.3 of Appendix K requires that for each hour of the data collection period, the ratio of the stack gas flow rate to the sample flow rate through each sorbent trap must be maintained within ±25 percent of the initial ratio established in the first hour of the data collection period. However, the rule has stated that when this criterion is not met, the appropriate consequences are to be determined on a ''case-by-case'' basis. EPA has reconsidered this approach and now believes that it allows for inconsistent application of the sorbent trap monitoring methodology. Therefore, the Agency proposed to revise Table K–1 to specify that a sample is invalidated if either: (a) More than 5 percent of the hourly ratios; or (b) more than 5 hourly ratios in the data collection period (whichever is less restrictive) fail to meet the ±25 percent acceptance criterion. Further, if only one of the paired traps is able to meet the specification, provided that it also meets the rest of the Appendix K QA criteria, the valid trap could be used for Part 75 reporting, if the STAF value of 1.222 is applied to the measured Hg concentration.

Appendix K has required data from a sorbent trap monitoring system to be invalidated whenever the relative deviation between the Hg concentrations measured by the paired traps is greater than 10 percent. EPA proposed to revise this requirement, to allow sources to report the higher of the two Hg concentrations measured by a pair of sorbent traps whenever the RD specification is not met, rather than invalidating the sorbent trap system data for the entire collection period. The Agency also proposed, for consistency with the proposed changes § 75.22(a), to revise Table K–1 to include an alternative relative deviation specification of 20 percent for paired sorbent traps, when low effluent concentrations of Hg (≤ 1 μg/m^3) are encountered.

EPA further proposed to add two new paragraphs, (k) and (l), to § 75.15. Proposed § 75.15(k) would have required that whenever the RATA of a sorbent trap system is performed, the sorbent traps used to collect the RATA run data must be the same size as the traps used for daily operation of the monitoring system. Likewise, the sorbent material must be the same type that is used for daily operation. Proposed § 75.15(l) would have required a diagnostic RATA of the sorbent trap system whenever either the size of the sorbent traps or the type of sorbent material was changed. Data from the modified sorbent trap system would not have been acceptable for Part 75 reporting until the RATA is passed, with one exception, i.e., data collected during a successful diagnostic RATA test period could be reported as quality-assured.

Finally, revisions to section 7.2.3 of Appendix K were proposed, requiring that the sample flow rate through a sorbent trap monitoring system must be zero when the unit is not operating. EPA believes this clarification is needed to prevent the system from sampling ambient air during periods when the combustion unit is off-line, which would artificially lower the Hg concentrations measured by the sorbent traps, resulting in under-reporting of Hg mass emissions.

Summary of Rule Changes

The commenters generally favored the proposal to add a 20 percent alternative relative deviation (RD) specification for sources with low Hg emissions (≤ 1.0

μg/m³). However, concerns were expressed that even a 20 percent RD specification might be difficult to meet when emissions are exceptionally low. For instance, following a flue gas desulfurization system, the Hg emission levels can be as low as 0.1 to 0.2 μg/m³. One commenter suggested that the allowable RD for low emitters should be either 20 percent or 0.03 μg/m³ absolute difference, whichever is less restrictive (see section 2.9.2 of the Response to Comments document). EPA agrees with this comment and has incorporated the 0.03 μg/m³ alternative RD specification into both Appendix K (for sorbent trap monitoring systems), and § 75.22 (for the Ontario Hydro Method and EPA Method 29).

The commenters were divided on the proposed single trap adjustment factor (STAF) provisions. Two commenters supported the proposed amendments and four others objected to them. Those objecting expressed concern that applying the proposed STAF value of 1.222 in cases where one trap meets all of the QA requirements is unnecessarily punitive. Several of the commenters recommended that the STAF value should be 1.111, which would be consistent with the averaging that is performed when the results of both traps are available and would appropriately weight the results of the valid trap (see section 4.3 of the Response to Comments document for further discussion). After careful consideration of the comments, EPA has decided to incorporate the commenters' suggestion regarding the value of the STAF. Therefore, the single-trap adjustment factor provisions have been finalized as proposed, except that the value of the STAF is 1.111.

Regarding proposed paragraphs (k) and (l) in § 75.15, EPA has reconsidered its position and has withdrawn the requirement for the sorbent traps used for RATA testing to be the same size as the traps used for daily operation of the monitoring system. Accordingly, the proposed requirement to perform a diagnostic RATA when the trap size is changed has also been withdrawn. The Agency is finalized paragraph (k) as part of a direct-final rulemaking on September 7, 2007 (72 FR 51494–51531). Paragraph (k) requires only that the type of sorbent material used for the RATAs be the same as the sorbent material used for daily operation. Today's rule finalizes paragraph (l) of § 75.15, to require a diagnostic RATA within 720 operating hours whenever a new type of sorbent material begins to be used in the traps (e.g., using brominated carbon instead of iodated carbon). Commenters on proposed paragraph (l) questioned why data collected by the modified sorbent trap system are considered invalid prior to the diagnostic RATA. The commenters requested that EPA revise paragraph (l) to allow data collected prior to the diagnostic RATA to be reported as valid if the RATA is passed. The commenters' suggestion is reasonable and has been incorporated into the final rule. A passed diagnostic RATA demonstrates that the change in sorbent material has not significantly affected the monitoring system's ability to accurately measure Hg emissions. Therefore, § 75.15(l) allows the data from the modified sorbent trap system to be considered conditionally valid according to § 75.20(b)(3), for up to 720 unit or stack operating hours after switching to a new type of sorbent material. If the diagnostic RATA is passed within the 720 operating hour window, the data recorded by the modified system prior to the RATA may be reported as quality-assured. If the RATA is failed, no data from the modified system may be reported as quality-assured until a subsequent RATA is passed. If the diagnostic RATA is not completed within the allotted 720 operating hour window but is passed on the first attempt, data from the modified system are considered to be invalid from the first hour after the expiration of the 720 operating hour window until the completion of the RATA.

No comments were received on the following proposed amendments: (1) The proposal to allow the higher Hg concentration to be reported when the RD criterion for the paired sorbent traps is not met; (2) the proposed acceptance criteria for the hourly ratios of stack gas flow rate to sample flow rate; and (3) the proposal to require the sample flow rate through a sorbent trap monitoring system to be zero when the affected unit is off-line. Therefore, these provisions have been finalized, as proposed.

O. Other Rule revisions

1. Particulate Matter Monitoring Systems

Background

EPA received a comment that was outside the scope of the proposed rule, requesting that units with installed particulate matter (PM) monitoring systems be exempted from the opacity monitoring requirements of § 75.14.

Summary of Rule Changes

Although the comment was outside the scope of this rulemaking and no response is required, EPA believes that it has merit in light of June 13, 2007 amendments to Subparts Da and Db of 40 CFR Part 60 (see: 72 FR p.32710). For certain affected units (some of which are also subject to Part 75), these rule revisions either require or allow a particulate matter (PM) monitoring system to be used in lieu of an opacity monitor (e.g., see §§ 60.49Da(t), and 60.48b(j)).

Summary of Rule Changes

Today's rule incorporates the commenter's recommendation, as new paragraph (e) in § 75.14. The Agency believes that this revision to Part 75 is non-controversial and is consistent with EPA's ongoing commitment to harmonization of the Part 60 and Part 75 continuous monitoring regulations.

2. Default Moisture Values for Hg Monitoring

Background

For dry-basis Hg CEMS and sorbent trap monitoring systems, the hourly Hg emissions data must be corrected for the stack gas moisture content. This requirement can be met by using one of the fuel-specific default moisture values specified in Part 75. Several places in § 75.80, § 75.81, and Appendix K state that for the purposes of Hg monitoring, a default moisture value from § 75.11(b) or § 75.12(b) may be used in lieu of installing a continuous moisture monitoring system. However, the reference to § 75.12(b) is incorrect. Only the default moisture values in § 75.11(b) are appropriate for Hg monitoring applications. Equation F–29, the only Hg mass emissions equation with a moisture correction term, is structurally similar to Equation F–2 for SO_2 mass emissions. The default moisture values in § 75.11(b) are the ones that apply to Equation F–2. Hence, they apply also to Equation F–29. The default moisture values in § 75.12(b) are used for NO_X emission rate calculations, and several of them are not applicable to Hg mass emissions monitoring.

Summary of Rule Changes

All references to the default moisture values in § 75.12(b) have been removed from § 75.80, § 75.81, and Appendix K.

3. Hg Stratification Testing

Background

To support the Clean Air Mercury Regulation (CAMR), which was published in 2005 (*see:* 70 FR 28606, May 18, 2005), EPA added Hg monitoring provisions to Part 75, among which were revisions to § 75.22(a) and to section 6.5.10 of Appendix A, specifying ASTM D6784–02, the ''Ontario Hydro Method'', as the appropriate reference method for

measuring Hg concentration. On August 22, 2006 EPA proposed to add Method 29 (which is similar to Ontario Hydro) to Part 75, as an alternative Hg reference method. Most recently, in a direct-final action on September 7, 2007. EPA published two more alternative reference methods (RMs) for measuring vapor phase Hg emissions, Method 30A (an instrumental method) and Method 30B (a sorbent-based method). Today's rule allows the use of Methods 29, 30A, and 30B as alternatives to the Ontario Hydro Method (see the revisions to § 75.22(a) and Section 6.5.10 of Appendix A). EPA anticipates that in 2008 and beyond, all four of the Hg reference methods in Part 75 will be used, to a greater or lesser extent, for the Hg emission testing required under §§ 75.81(c) and (d) and for RATAs of Hg monitoring systems.

For Hg emission tests, Methods 30A and 30B require 12 sampling points (located according to EPA Method 1) for each test run, unless the results of a Hg stratification test justify using fewer points. The Ontario Hydro Method and Method 29 each require a minimum of 12 sample points and do not include any stratification test provisions or alternative sampling point location criteria.

For the RATAs of Part 75 Hg monitoring systems, when Methods 30A and 30B are used, both methods defer to the RM point selection and location procedures described in Part 75, Appendix A, section 6.5.6 and Performance Specification 2 (PS2) in Appendix B of 40 CFR Part 60. This is the familiar sampling approach that allows the use of a ''short'' 3-point measurement line at locations where stratification is not expected, but requires the use of a 3-point ''long'' measurement line (which includes a point at the center of the stack) at locations where stratification is suspected (e.g., after a wet scrubber), unless the results of a stratification test justify using the 3-point short line (or perhaps a single sampling point). As an alternative, Part 75 allows the use of six Method 1 sampling points located along a diameter, at any test location (including those where stratification is suspected). This same RM sampling point location methodology applies to Hg RATAs in which the Ontario Hydro Method or Method 29 is used as the reference method.

However, when testing is performed downstream of a scrubber, measuring at the center of a large-diameter stack is extremely difficult logistically, and testing at 6 points along a diameter may not be possible for certain test platform and test port configurations. Therefore, historically, most testers have opted to perform stratification testing at scrubbed stacks to justify sampling along a 3-point short line (or at a single point), which greatly simplifies the test procedures, in that all measurements can be made at one test port, using a probe of reasonable length. Unfortunately, Part 75 does not have a stratification test procedure for Hg, and, as previously noted, neither the Ontario Hydro Method nor Method 29 has any stratification test provisions—but there is a Hg stratification test procedure in Method 30A.

Summary of Rule Changes

In view of these considerations, EPA has deemed it necessary to revise Section 6.5.6(c) of Appendix A, to cross-reference the Hg stratification test provisions in Sections 8.1.3 through 8.1.3.5 of Method 30A. Further, § 75.22(a)(7) has been revised to address RM sample point location and stratification testing when the Ontario Hydro Method or Method 29 is used for the Hg low mass emission testing required under §§ 75.81(c) and (d). For that particular application, revised § 75.22(a)(7) requires the sampling points to be located according to Section 8.1 of Method 30A and cross-references the stratification test provisions in sections 8.1.3 through 8.1.3.5 of Method 30A.

These amendments to Appendix A and § 75.22 provide a consistent approach to stratification testing and RM sampling point location for Hg emission testing and Hg monitoring system RATAs, irrespective of which Hg reference method is used for the testing.

II. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a ''significant regulatory action'' under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

B. Paperwork Reduction Act

The information collection requirements in the final rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 2203.02. The information collection requirements are not enforceable until OMB approves them.

The information requirements are based on the revisions to the monitoring, recordkeeping, and reporting requirements in 40 CFR Part 75, which are mandatory for all sources subject to the Acid Rain Program under Title IV of the Clean Air Act and certain other emissions trading programs administered by EPA. 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. The preexisting Part 75 rule requirements amended in this final rule are covered by existing ICRs for the Acid Rain Program (EPA ICR number 1633.14; OMB control number 2060–0258), the NO_X SIP Call (EPA ICR number 1857.04; OMB number 2060–0445), and the Clean Air Interstate Rule (EPA ICR number 2152.02; OMB number 2060–0570). The separate ICR for the final rule revisions addresses the one-time costs necessary for sources to review the rule revisions and adapt their recordkeeping and reporting systems to the revised requirements. The EPA believes that the long term implications of the rule revisions will be to reduce the ongoing burdens and costs associated with Part 75 compliance, but those impacts will be addressed as EPA renews the individual program ICRs. The annual monitoring, reporting, and recordkeeping burden for this collection (averaged over the first 3 years after the effective date of the final rule) is estimated to be 124,976 labor hours per year at a total annual cost of $8,581,420. This estimate includes burdens for rule review, recordkeeping and reporting software upgrades, and software debugging activities, as well as the capital costs of upgrading recordkeeping and reporting software.

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.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the SBA's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analysis is to identify and address regulatory alternatives ''which minimize any significant economic impact of the rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden or otherwise has a positive economic effect on all of the small entities subject to the rule. These final rule revisions represent minor changes to existing monitoring requirements used in EPA emission trading programs and we expect these revisions to reduce the economic burden for affected entities in the long term.

Although there will be some small level of up front costs to reprogram existing electronic data reporting software used under this program, the long term effects of these revisions will be to allow continued efficient electronic data submittals that should act to relieve some of the long term reporting burdens for affected sources, which include some small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 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 final 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 to the private sector in any 1 year, nor does this rule significantly or uniquely impact small governments, because it contains no requirements that impose new obligations upon them. 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. The revisions primarily make certain changes EPA has determined are necessary as part of upgrading the data systems used to manage data submitted under the program and to streamline the methods for sources to report their information. The revisions also clarify certain issues that have been raised during ongoing implementation of the existing rule and update the information on various voluntary consensus standards incorporated by reference in the rule. Some States do have programs that rely on the monitoring provisions in 40 CFR Part 75, and States may incur some costs associated with reviewing the modifications to Part 75, but the rule revisions and the impact on the States are not significant.

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. These rule revisions represent minor adjustments to existing regulations. The revisions primarily make certain changes EPA has determined are necessary as part of upgrading the data systems used to manage data submitted under the program and to streamline the methods for sources to report their information. The revisions also clarify certain issues that have been raised during ongoing implementation of the existing rule and update the information on various voluntary consensus standards incorporated by reference in the rule. Some States do have programs that rely on the monitoring provisions in 40 CFR Part 75, and States may incur some costs

associated with reviewing the modifications to Part 75, but the rule revisions and the impact on the States are not significant. Thus, Executive Order 13132 does not apply to this final rule.

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 this final rule.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045: ''Protection of Children From Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

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

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rule includes updated information on a number of voluntary consensus standards previously included in 40 CFR Part 75, as well as the addition of certain other voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This final rule does not affect or relax the control measures on sources impacted by emission trading programs that rely on monitoring under 40 CFR Part 75.

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 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). This rule will be effective on January 24, 2008 for good cause found as explained in this rule.

L. Petitions for Judicial Review

Under Clean Air Act section 307(b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 24, 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 a rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the Administrative Procedures Act.)

M. Determination Under Section 307(d)

Pursuant to Clean Air Act section 307(d)(1)(U), the Administrator determines that this action is subject to the provisions of section 307(d). Section 307(d)(1)(U) provides that the provisions of section 307(d) apply to ''such other actions as the Administrator may determine.'' While the Administrator did not make this determination earlier, the Administrator believes that all of the procedural requirements, e.g., docketing, hearing and comment periods, of section 307(d) have been complied with during the course of this rulemaking.

List of Subjects in 40 CFR Parts 72 and 75

Environmental protection, Acid rain, Administrative practice and procedure, Air pollution control, Carbon dioxide, Continuous emission monitoring, Electric utilities, Incorporation by reference, Nitrogen oxides, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: December 19, 2007.

Stephen L. Johnson,

Administrator.

■ For the reasons set forth in the preamble, parts 72 and 75 of chapter I of title 40 of the Code of Federal Regulations are amended as follows:

PART 72—PERMITS REGULATION

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

Authority: 42 U.S.C. 7601 and 7651, *et seq.*

Subpart A—Acid Rain Program General Provisions

■ 2. Section 72.2 is amended as follows:

■ a. Revising the definition of ''Capacity factor'';

■ b. In the definition of ''Diluent cap'', by removing the words '', CO_2 mass emission rate, or heat input rate,'' after the words ''NO_X emission rate'';

■ c. In the definition of ''EPA protocol gas'', by adding a new sentence to the end of the definition;

■ d. Revising the definition of ''Excepted monitoring system'';

■ e. Adding the new definitions in alphabetical order for ''Air Emission Testing Body (AETB)'', ''EPA Protocol Gas Verification Program'', ''Long-term cold storage'', ''NIST traceable elemental Hg standards'', ''NIST traceable source of oxidized Hg'', ''Qualified Individual'', and ''Specialty gas producer''; and

■ f. Removing the definition for ''Research gas material (RGM)''

The revisions and additions read as follows:

§ 72.2 Definitions.

* * * * *

Air Emission Testing Body (AETB) means a company or other entity that conducts Air Emissions Testing as described in ASTM D7036–04 (incorporated by reference under § 75.6 of this part).

* * * * *

Capacity factor means either:

(1) The ratio of a unit's actual annual electric output (expressed in MWe/hr) to the unit's nameplate capacity (or maximum observed hourly gross load (in MWe/hr) if greater than the nameplate capacity) times 8760 hours; or

(2) The ratio of a unit's annual heat input (in million British thermal units or equivalent units of measure) to the unit's maximum rated hourly heat input rate (in million British thermal units per hour or equivalent units of measure) times 8,760 hours.

* * * * *

EPA protocol gas * * * On and after January 1, 2009, vendors advertising certification with the EPA Traceability Protocol *or* distributing gases as ''EPA Protocol Gas'' must participate in the EPA Protocol Gas Verification Program. Non-participating vendors may not use ''EPA'' in any form of advertising for these products, unless approved by the Administrator.

EPA Protocol Gas Verification Program means the EPA Protocol Gas audit program described in Section 2.1.10 of the ''EPA Traceability Protocol for Assay and Certification of Gaseous Calibration Standards,'' September 1997, EPA–600/R–97/121 (EPA Protocol Procedure) or such revised procedure as approved by the Administrator.

* * * * *

Excepted monitoring system means a monitoring system that follows the procedures and requirements of § 75.15 of this chapter, § 75.19 of this chapter, § 75.81(b) of this chapter or of appendix D, or E to part 75 for approved exceptions to the use of continuous emission monitoring systems.

* * * * *

Long-term cold storage means the complete shutdown of a unit intended to last for an extended period of time (at least two calendar years) where notice for long-term cold storage is provided under § 75.61(a)(7).

* * * * *

NIST traceable elemental Hg standards means either:

(1) Compressed gas cylinders having known concentrations of elemental Hg, which have been prepared according to the ''EPA Traceability Protocol for Assay and Certification of Gaseous Calibration Standards''; or

(2) Calibration gases having known concentrations of elemental Hg, produced by a generator that fully meets the performance requirements of the ''EPA Traceability Protocol for Qualification and Certification of Elemental Mercury Gas Generators''.

* * * * *

NIST traceable source of oxidized Hg means a generator that: Is capable of providing known concentrations of vapor phase mercuric chloride ($HgCl_2$), and that fully meets the performance requirements of the ''EPA Traceability Protocol for Qualification and Certification of Oxidized Mercury Gas Generators''.

* * * * *

Qualified Individual means an individual who meets the requirements as described in ASTM D7036–04, ''Standard Practice for Competence of Air Emission Testing Bodies'' (incorporated by reference under § 75.6 of this part).

* * * * *

Specialty gas producer means an organization that prepares and analyzes compressed gas mixtures for use as calibration gases and that offers the mixtures for sale to end users or to third-party vendors for resale to end users.

* * * * *

PART 75—CONTINUOUS EMISSION MONITORING

■ 3. The authority citation for Part 75 continues to read as follows:

Authority: 42 U.S.C. 7601, and 7651k, and 7651k note.

Subpart A—General

■ 4. Section 75.4 is amended by revising paragraph (d) to read as follows:

§ 75.4 Compliance dates.

* * * * *

(d) This paragraph, applies to affected units under the Acid Rain Program and to units subject to a State or Federal pollutant mass emissions reduction program that adopts the emission monitoring and reporting provisions of this part. In accordance with § 75.20, for an affected unit which, on the applicable compliance date, is either in long-term cold storage (as defined in § 72.2 of this chapter) or is shut down as the result of a planned outage or a forced outage, thereby preventing the required continuous monitoring system certification tests from being completed by the compliance date, the owner or operator shall provide notice of such unit storage or outage in accordance with § 75.61(a)(3) or § 75.61(a)(7), as applicable. For the planned and unplanned unit outages described in this paragraph, the owner or operator shall ensure that all of the continuous monitoring systems for SO_2, NO_X, CO_2, Hg, opacity, and volumetric flow rate required under this part (or under the applicable State or Federal mass emissions reduction program) are installed and that all required certification tests are completed no later than 90 unit operating days or 180 calendar days (whichever occurs first) after the date that the unit recommences commercial operation, notice of which date shall be provided under § 75.61(a)(3) or § 75.61(a)(7), as applicable. The owner or operator shall determine and report SO_2 concentration, NO_X emission rate, CO_2 concentration, Hg concentration, and flow rate data (as applicable) for all unit operating hours after the applicable compliance date until all of the required certification tests are successfully completed, using either:

(1) The maximum potential concentration of SO_2 (as defined in section 2.1.1.1 of appendix A to this part), the maximum potential NO_X emission rate, as defined in § 72.2 of this chapter, the maximum potential flow rate, as defined in section 2.1.4.1 of appendix A to this part, the maximum potential Hg concentration, as defined in section 2.1.7.1 of appendix A to this part, or the maximum potential CO_2 concentration, as defined in section 2.1.3.1 of appendix A to this part; or

(2) The conditional data validation provisions of § 75.20(b)(3); or

(3) Reference methods under § 75.22(b); or

(4) Another procedure approved by the Administrator pursuant to a petition under § 75.66.

* * * * *

■ 5. Section 75.6 is amended by:

■ a. Removing ''D129–91'' and adding in its place ''D129–00'', in paragraph (a)(1);

■ b. Removing ''D240–87 (Reapproved 1991)'' and adding in its place ''D240–00'', in paragraph (a)(2);

■ c. Removing ''D287–82 (Reapproved 1987)'' and adding in its place ''D287–92 (Reapproved 2000)'', in paragraph (a)(3);

■ d. Removing ''D388–92'' and adding in its place ''D388–99'', in paragraph (a)(4);

■ e. Removing and reserving paragraph (a)(5);

■ f. Removing ''D1072–90'' and adding in its place ''D1072–06'', and also by adding the phrase ''by Combustion and Barium Chloride Titration'' after the word ''Gases'', in paragraph (a)(6);

■ g. Removing ''D1217–91'' and adding in its place ''D1217–93 (Reapproved 1998)'', in paragraph (a)(7);

■ h. Removing the phrase ''(Reapproved 1990)'', and by removing ''D1250–80'' and adding in its place ''D1250–07'', and also by adding the phrase ''Use of the'' after the first occurrence of the word ''for'', in paragraph (a)(8);

■ i. Removing the phrase ''D1298–85 (Reapproved 1990), Standard Practice for Density, Relative Density (Specific Gravity)'' and adding in its place ''D1298–99, Standard Test Method for Density, Relative Density (Specific Gravity),'', in paragraph (a)(9);

■ j. Removing ''D1480–91'' and adding in its place ''D1480–93 (Reapproved 1997)'', in paragraph (a)(10);

■ k. Removing ''D1481–91'' and adding in its place ''D1481–93 (Reapproved 1997)'', in paragraph (a)(11);

■ l. Removing ''D1552–90'' and adding in its place ''D1552–01'', and also by removing the phrase, ''High Temperature'' and adding in its place ''High-Temperature'', in paragraph (a)(12);

■ m. Removing ''D1826–88'' and adding in its place ''D1826–94 (Reapproved 1998)'', in paragraph (a)(13);

■ n. Removing ''D1945–91'' and adding in its place ''D1945–96 (Reapproved 2001)'', in paragraph (a)(14);

■ o. Adding the phrase ''(Reapproved 2006)'' after ''D1946–90'', in paragraph (a)(15);

■ p. Removing and reserving paragraph (a)(16);

■ q. Removing ''D2013–86'' and adding in its place ''D2013–01'', and also by removing the phrase, ''Method of'', and adding in its place, ''Practice for'', in paragraph (a)(17);

■ r. Removing and reserving paragraph (a)(18);

■ s. Removing ''D2234–89'' and adding in its place ''D2234–00'', and also by removing the phrase ''Test Methods'', and adding in its place, ''Practice'', in paragraph (a)(19);

■ t. Removing and reserving paragraph (a)(20);

■ u. Removing ''D2502–87'' and adding in its place ''D2502–92 (Reapproved 1996)'', in paragraph (a)(21);

■ v. Removing ''D2503–82 (Reapproved 1987)'' and adding in its place ''D2503–92 (Reapproved 1997)'', and also by removing the phrase ''Molecular Weight (Relative Molecular Mass)'', and by adding in its place, ''Relative Molecular Mass (Molecular Weight)'', in paragraph (a)(22);

■ w. Removing ''D2622–92'' and adding in its place ''D2622–98'', and also by removing the phrase ''X-Ray Spectrometry'', and adding in its place ''Wavelength Dispersive X-ray Fluorescence Spectrometry'', in paragraph (a)(23);

■ x. Removing ''D3174–89'' and adding in its place ''D3174–00'', and also by removing the word ''From'' and adding in its place ''from'', in paragraph (a)(24);

■ y. Adding the phrase ''(Reapproved 2002)'' after ''D3176–89'', in paragraph (a)(25);

■ z. Removing ''D3177–89'' and adding in its place the phrase '' D3177–02 (Reapproved 2007)'' in paragraph (a)(26);

■ aa. Removing '' D3178–89 (1997), ''Standard Test Methods for Carbon and Hydrogen in the Analysis Sample of Coal and Coke'' and adding in its place ''D5373–02 (Reapproved 2007) Standard Test Methods for Instrumental Determination of Carbon, Hydrogen, and Nitrogen in Laboratory Samples of Coal and Coke'' in paragraph (a)(27);

■ bb. Removing ''D3238–90'' and adding in its place ''D3238–95 (Reapproved 2000)'', in paragraph (a)(28);

■ cc. Removing ''D3246–81 (Reapproved 1987)'' and adding in its place ''D3246–96'', and also by removing the word ''By'' and adding in its place, ''by'', in paragraph (a)(29);

■ dd. Removing and reserving paragraph (a)(30);

■ ee. Removing ''D3588–91'' and adding in its place ''D3588–98'', and also by removing the phrase, ''(Specific Gravity)'', in paragraph (a)(31);

■ ff. Removing ''D4052–91'' and adding in its place ''D4052–96 (Reapproved 2002)'', in paragraph (a)(32);

■ gg. Removing ''D4057–88'' and adding in its place ''D4057–95 (Reapproved 2000)'', in paragraph (a)(33);

■ hh. Removing ''D4177–82 (Reapproved 1990)'' and adding in its place ''D4177–95 (Reapproved 2000)'', in paragraph (a)(34);

■ ii. Removing ''D4239–85'' and adding in its place ''D4239–02'', and also by removing the phrase ''High Temperature'', and adding in its place ''High-Temperature'', in paragraph (a)(35);

■ jj. Removing ''D4294–90'' and adding in its place ''D4294–98'', adding the words ''and Petroleum'' after the word ''Petroleum'', by removing the word ''X-Ray'' and adding in its place, ''X-ray'', and by removing the word ''Spectroscopy'' and adding in its place, ''Spectrometry'' in paragraph (a)(36);

■ kk. Removing the phrase ''(Reapproved 1989)'' and adding in its place the phrase ''(Reapproved 2006)'', in paragraph (a)(37);

■ ll. Removing ''(reapproved 2004)'', and adding in its place, ''(Reapproved 2004)'', in paragraph (a)(38);

■ mm. Adding the phrase ''(Reapproved 2006)'' after ''D4891–89'', in paragraph (a)(39);

■ nn. Removing ''D5291–92'' and adding in its place ''D5291–02'', in paragraph (a)(40);

■ oo. Removing ''D5373–93'', and adding in its place ''D5373–02 (Reapproved 2007)'' and adding the word ''Test'' after the word ''Standard'', in paragraph (a)(41);

■ pp. Removing ''D5504–94'' and adding in its place ''D5504–01'', in paragraph (a)(42);

■ qq. Adding new paragraphs (a)(45), (a)(46), (a)(47), (a)(48), and (a)(49);

■ rr. Removing the phrase ''ASME MFC–3M–1989 with September 1990 Errata'' and adding in its place the phrase ''ASME MFC–3M–2004 (Revision of ASME MFC–3M–1989 (R1995))'', in paragraph (b)(1);

■ ss. Removing the date ''1990'' and adding in its place the date ''1997'' in the parenthetical, in paragraph (b)(2);

■ tt. Adding the phrase ''(Reaffirmed 1994)'' after ''ASME–MFC–5M–1985,'', in paragraph (b)(3);

■ uu. Removing the phrase ''1987 with June 1987 Errata'' and adding in its

place the number ''1998'' at the end of ''MFC–6M–'', and also by removing ''Flow Meters'' and adding in its place, ''Flowmeters'', in paragraph (b)(4);

■ vv. Removing the phrase ''with December 1989 Errata'' and adding in its place the phrase ''(Reaffirmed 2001)'', in paragraph (b)(6);

■ ww. Removing the number ''86'' and adding in its place the number ''96'' at the end of ''GPA Standard 2172–'', in paragraph (d)(1);

■ xx. Removing the number ''90'' and adding in its place the number ''00'' at the end of ''GPA Standard 2261–00'', in paragraph (d)(2);

■ yy. Revising paragraphs (f)(1) and (f)(3); and

■ zz. Adding new paragraph (f)(4).

The revisions and additions read as follows:

§ 75.6 Incorporation by reference.

* * * * *

(a) * * *

(45) ASTM D6667–04, Standard Test Method for Determination of Total Volatile Sulfur in Gaseous Hydrocarbons and Liquefied Petroleum Gases by Ultraviolet Fluorescence, for appendix D of this part.

(46) ASTM D4809–00, Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter (Precision Method), for appendices D and F of this part.

(47) ASTM D5865–01a, Standard Test Method for Gross Calorific Value of Coal and Coke, for appendices A, D, and F of this part.

(48) ASTM D7036–04, Standard Practice for Competence of Air Emission Testing Bodies, for appendices A, B, and E of this part.

(49) ASTM D5453–06, Standard Test Method for Determination of Total Sulfur in Light Hydrocarbons, Spark Ignition Engine Fuel, Diesel Engine Fuel, and Engine Oil by Ultraviolet Fluorescence, for appendix D of this part.

* * * * *

(f) * * *

(1) American Petroleum Institute (API) Manual of Petroleum Measurement Standards, Chapter 3—Tank Gauging, Section 1A, Standard Practice for the Manual Gauging of Petroleum and Petroleum Products, Second Edition, August 2005; Section 1B—Standard Practice for Level Measurement of Liquid Hydrocarbons in Stationary Tanks by Automatic Tank Gauging, Second Edition June 2001; Section 2—Standard Practice for Gauging Petroleum and Petroleum Products in Tank Cars, First Edition, August 1995 (Reaffirmed March 2006); Section 3—Standard Practice for Level Measurement of Liquid Hydrocarbons in Stationary Pressurized Storage Tanks by Automatic Tank Gauging, First Edition June 1996; Section 4—Standard Practice for Level Measurement of Liquid Hydrocarbons on Marine Vessels by Automatic Tank Gauging, First Edition April 1995 (Reaffirmed, March 2006); and Section 5—Standard Practice for Level Measurement of Light Hydrocarbon Liquids Onboard Marine Vessels by Automatic Tank Gauging, First Edition March 1997 (Reaffirmed, March 2003); for § 75.19.

* * * * *

(3) American Petroleum Institute (API) Manual of Petroleum Measurement Standards, Chapter 4—Proving Systems, Section 2—Pipe Provers (Provers Accumulating at Least 10,000 Pulses), Second Edition, March 2001, and Section 5—Master-Meter Provers, Second Edition, May 2000, for appendix D to this part.

(4) American Petroleum Institute (API) Manual of Petroleum Measurement Standards, Chapter 22—Testing Protocol, Section 2—Differential Pressure Flow Measurement Devices (First Edition, August 2005), for appendix D to this part.

■ 6. Section 75.11 is amended by:

■ a. Revising the heading of the section;

■ b. Adding the phrase ''and 14.0% for natural gas (boilers, only);'' after the word ''wood;'', in paragraph (b)(1);

■ c. Revising paragraph (d)(3);

■ d. Revising paragraphs (e) introductory text and (e)(1);

■ e. Removing and reserving paragraph (e)(2);

■ f. Revising paragraph (e)(3) introductory text;

■ g. Add new paragraph (e)(4); and

■ h. Revising paragraph (f).

The revisions and additions read as follows:

§ 75.11 Specific provisions for monitoring SO_2 emissions.

* * * * *

(d) * * *

(3) By using the low mass emissions excepted methodology in § 75.19(c) for estimating hourly SO_2 mass emissions if the affected unit qualifies as a low mass emissions unit under § 75.19(a) and (b). If this option is selected for SO_2, the LME methodology must also be used for NO_X and CO_2 when these parameters are required to be monitored by applicable program(s).

(e) *Special considerations during the combustion of gaseous fuels.* The owner or operator of an affected unit that uses a certified flow monitor and a certified diluent gas (O_2 or CO_2) monitor to measure the unit heat input rate shall, during any hours in which the unit combusts only gaseous fuel, determine SO_2 emissions in accordance with paragraph (e)(1) or (e)(3) of this section, as applicable.

(1) If the gaseous fuel qualifies for a default SO_2 emission rate under Section 2.3.1.1, 2.3.2.1.1, or 2.3.6(b) of appendix D to this part, the owner or operator may determine SO_2 emissions by using Equation F–23 in appendix F to this part. Substitute into Equation F–23 the hourly heat input, calculated using the certified flow monitoring system and the certified diluent monitor (according to the applicable equation in section 5.2 of appendix F to this part), in conjunction with the appropriate default SO_2 emission rate from section 2.3.1.1, 2.3.2.1.1, or 2.3.6(b) of appendix D to this part. When this option is chosen, the owner or operator shall perform the necessary data acquisition and handling system tests under § 75.20(c), and shall meet all quality control and quality assurance requirements in appendix B to this part for the flow monitor and the diluent monitor; or

(2) [Reserved]

(3) The owner or operator may determine SO_2 mass emissions by using a certified SO_2 continuous monitoring system, in conjunction with the certified flow rate monitoring system. However, if the gaseous fuel is very low sulfur fuel (as defined in § 72.2 of this chapter), the SO_2 monitoring system shall meet the following quality assurance provisions when the very low sulfur fuel is combusted:

* * * * *

(4) The provisions in paragraph (e)(1) of this section, may also be used for the combustion of a solid or liquid fuel that meets the definition of very low sulfur fuel in § 72.2 of this chapter, mixtures of such fuels, or combinations of such fuels with gaseous fuel, if the owner or operator submits a petition under § 75.66 for a default SO_2 emission rate for each fuel, mixture or combination, and if the Administrator approves the petition.

(f) *Other units.* The owner or operator of an affected unit that combusts wood, refuse, or other material in addition to oil or gas shall comply with the monitoring provisions for coal-fired units specified in paragraph (a) of this section, except where the owner or operator has an approved petition to use the provisions of paragraph (e)(1) of this section.

■ 7. Section 75.12 is amended by:

■ a. Revising the section heading;

■ b. Removing the word ''and'' before the number ''15.0%'', and by adding the phrase ''; and 18.0% for natural gas

(boilers, only)'' after the word ''wood'', in paragraph (b); and

■ c. Revising paragraph (e)(3).

The revisions read as follows:

§ 75.12 Specific provisions for monitoring NO_X emission rate.

* * * * *

(e) * * *

(3) Use the low mass emissions excepted methodology in § 75.19(c) for estimating hourly NO_X emission rate and hourly NO_X mass emissions, if applicable under § 75.19(a) and (b). If this option is selected for NO_X, the LME methodology must also be used for SO_2 and CO_2 when these parameters are required to be monitored by applicable program(s).

* * * * *

■ 8. Section 75.13 is amended by revising paragraph (d)(3) to read as follows:

§ 75.13 Specific provisions for monitoring CO_2 emissions.

* * * * *

(d) * * *

(3) Use the low mass emissions excepted methodology in § 75.19(c) for estimating hourly CO_2 mass emissions, if applicable under § 75.19(a) and (b). If this option is selected for CO_2, the LME methodology must also be used for NO_X and SO_2 when these parameters are required to be monitored by applicable program(s).

■ 9. Section 75.14 is amended by adding paragraph (e) to read as follows:

§ 75.14 Specific provisions for monitoring opacity.

* * * * *

(e) Unit with a certified particulate matter (PM) monitoring system. If, for a particular affected unit, the owner or operator installs, certifies, operates, maintains, and quality-assures a continuous particulate matter (PM) monitoring system in accordance with Procedure 2 in appendix F to part 60 of this chapter, the unit shall be exempt from the opacity monitoring requirement of this part.

■ 10. Section 75.15 is amended by:

■ a. Removing the reference ''(j)'' and adding the reference ''(l)'' in its place in the introductory paragraph;

■ b. Revising paragraph (h); and

■ c. Adding paragraph (l).

The revisions and additions read as follows:

§ 75.15 Special provisions for measuring Hg mass emissions using the excepted sorbent trap monitoring methodology.

* * * * *

(h) The hourly Hg mass emissions for each collection period are determined using the results of the analyses in conjunction with contemporaneous hourly data recorded by a certified stack flow monitor, corrected for the stack gas moisture content. For each pair of sorbent traps analyzed, the average of the two Hg concentrations shall be used for reporting purposes under (75.84(f). Notwithstanding this requirement, if, due to circumstances beyond the control of the owner or operator, one of the paired traps is accidentally lost, damaged, or broken and cannot be analyzed, the results of the analysis of the other trap may be used for reporting purposes, provided that:

(1) The other trap has met all of the applicable quality-assurance requirements of this part; and

(2) The Hg concentration measured by the other trap is multiplied by a factor of 1.111.

* * * * *

(l) Whenever the type of sorbent material used by the traps is changed, the owner or operator shall conduct a diagnostic RATA of the modified sorbent trap monitoring system within 720 unit or stack operating hours after the date and hour when the new sorbent material is first used. If the diagnostic RATA is passed, data from the modified system may be reported as quality-assured, back to the date and hour when the new sorbent material was first used. If the RATA is failed, all data from the modified system shall be invalidated, back to the date and hour when the new sorbent material was first used, and data from the system shall remain invalid until a subsequent RATA is passed. If the required RATA is not completed within 720 unit or stack operating hours, but is passed on the first attempt, data from the modified system shall be invalidated beginning with the first operating hour after the 720 unit or stack operating hour window expires and data from the system shall remain invalid until the date and hour of completion of the successful RATA.

■ 11. Section 75.16 is amended by:

■ a. Revising paragraph (b)(1)(ii);

■ b. Adding the word ''rate'' after the phrase ''report heat input'' in the last sentence, in paragraph (e)(1); and

■ c. In the second sentence of paragraphs (e)(3) by removing both occurrences of the phrase ''steam flow'' and adding in its place the phrase ''steam load'' and adding the phrase ''or mmBtu/hr thermal output'' inside the parentheses, after the phrase ''in 1000 lb/hr'', in paragraph (e)(3).

The revisions read as follows:

§ 75.16 Special provisions for monitoring emissions from common, bypass, and multiple stacks for SO_2 emissions and heat input determinations.

* * * * *

(b) * * *

(1) * * *

(ii) Install, certify, operate, and maintain an SO_2 continuous emission monitoring system and flow monitoring system in the common stack and combine emissions for the affected units for recordkeeping and compliance purposes.

* * * * *

■ 12. Section 75.17 is amended by revising paragraph (d)(2) to read as follows:

§ 75.17 Special provisions for monitoring emissions from common, bypass, and multiple stacks for NO_X emission rate.

* * * * *

(d) * * *

(2) Install, certify, operate, and maintain a NO_X-diluent CEMS only on the main stack. If this option is chosen, it is not necessary to designate the exhaust configuration as a multiple stack configuration in the monitoring plan required under § 75.53, with respect to NO_X or any other parameter that is monitored only at the main stack. For each unit operating hour in which the bypass stack is used and the emissions are either uncontrolled (or the add-on controls are not documented to be operating properly), report the maximum potential NO_X emission rate (as defined in § 72.2 of this chapter). The maximum potential NO_X emission rate may be specific to the type of fuel combusted in the unit during the bypass (see § 75.33(c)(8)). Alternatively, for a unit with NO_X add-on emission controls, for each unit operating hour in which the bypass stack is used and the add-on NO_X emission controls are not bypassed, the owner or operator may report the maximum controlled NO_X emission rate (MCR) instead of the maximum potential NO_X emission rate provided that the add-on controls are documented to be operating properly, as described in the quality assurance/quality control program for the unit, required by section 1 in appendix B of this part. To provide the necessary documentation, the owner or operator shall record parametric data to verify the proper operation of the NO_X add-on emission controls as described in § 75.34(d). Furthermore, the owner or operator shall calculate the MCR using the procedure described in section 2.1.2.1(b) of appendix A to this part where the words ''maximum potential NO_X emission rate (MER)'' shall apply instead of the words ''maximum

controlled NO_X emission rate (MCR)'' and by using the NO_X MEC in the calculations instead of the NO_X MPC.

■ 13. Section 75.19 is amended by:
■ a. Revising paragraph (a)(1);
■ b. Revising paragraph (c)(1)(i);
■ c. Revising paragraph (c)(1)(iv)(A)(3);
■ d. Removing the words ''Method 20'' from paragraph (c)(1)(iv)(A)(4);
■ e. Removing the words ''Method 20'' from the definition of NO_X obs in the nomenclature for Equation LM–1a under paragraph (c)(1)(iv)(A);
■ f. Adding the phrase, ''that meets the quality assurance requirements of either: this part, or appendix F to part 60 of this chapter, or a comparable State CEM program,'' after the abbreviation ''CEMS'', in paragraph (c)(1)(iv)(G);
■ g. Adding paragraphs (c)(1)(iv)(I)(3), (4), (5) and (6);
■ h. Revising paragraph (c)(3)(ii)(B)(2);
■ i. Revising paragraph (c)(3)(ii)(H);
■ j. Removing the words ''from Table LM–1 of this section'' from the first sentence of paragraph (c)(4)(i)(A);
■ k. Revising the heading for paragraph (c)(4)(ii); and
■ l. Adding paragraph (c)(4)(ii)(D).

The revisions and additions read as follows:

§ 75.19 Optional SO_2, NO_X, and CO_2 emissions calculation for low mass emissions units.

* * * * *

(a) * * *

(1) For units that meet the requirements of this paragraph (a)(1) and paragraphs (a)(2) and (b) of this section, the low mass emissions (LME) excepted methodology in paragraph (c) of this section may be used in lieu of continuous emission monitoring systems or, if applicable, in lieu of methods under appendices D, E, and G to this part, for the purpose of determining unit heat input, NO_X, SO_2, and CO_2 mass emissions, and NO_X emission rate under this part. If the owner or operator of a qualifying unit elects to use the LME methodology, it must be used for all parameters that are required to be monitored by the applicable program(s). For example, for an Acid Rain Program LME unit, the methodology must be used to estimate SO_2, NO_X, and CO_2 mass emissions, NO_X emission rate, and unit heat input.

* * * * *

(c) * * *

(1) * * *

(i) If the unit combusts only natural gas and/or fuel oil, use Table LM–1 of this section to determine the appropriate SO_2 emission rate for use in calculating hourly SO_2 mass emissions under this section. Alternatively, for fuel oil combustion, a lower, fuel-specific SO_2 emission factor may be used in lieu of the applicable emission factor from Table LM–1, if a federally enforceable permit condition is in place that limits the sulfur content of the oil. If this alternative is chosen, the fuel-specific SO_2 emission rate in lb/mmBtu shall be calculated by multiplying the fuel sulfur content limit (weight percent sulfur) by 1.01. In addition, the owner or operator shall periodically determine the sulfur content of the oil combusted in the unit, using one of the oil sampling and analysis options described in section 2.2 of appendix D to this part, and shall keep records of these fuel sampling results in a format suitable for inspection and auditing. Alternatively, the required oil sampling and associated recordkeeping may be performed using a consensus standard (e.g., ASTM, API, etc.) that is prescribed in the unit's Federally-enforceable operating permit, in an applicable State regulation, or in another applicable Federal regulation. If the unit combusts gaseous fuel(s) other than natural gas, the owner or operator shall use the procedures in section 2.3.6 of appendix D to this part to document the total sulfur content of each such fuel and to determine the appropriate default SO2 emission rate for each such fuel.

* * * * *

(iv) * * *

(A) * * *

(3) Do not correct the NO_X concentration to 15% O_2.

* * * * *

(I) * * *

(*3*) The initial appendix E testing may be performed at a single load, between 75 and 100 percent of the maximum sustainable load defined in the monitoring plan for the unit, if the average annual capacity factor of the LME unit, when calculated according to the definition of ''capacity factor'' in § 72.2 of this chapter, is 2.5 percent or less for the three calendar years immediately preceding the year of the testing, and that the annual capacity factor does not exceed 4.0 percent in any of those three years. Similarly, for a LME unit that reports emissions data on an ozone season-only basis, the initial appendix E testing may be performed at a single load between 75 and 100 percent of the maximum sustainable load if the 2.5 and 4.0 percent capacity factor requirements are met for the three ozone seasons immediately preceding the date of the emission testing (see § 75.74(c)(11)). For a group of identical LME units, any unit(s) in the group that meet the 2.5 and 4.0 percent capacity factor requirements may perform the initial appendix E testing at a single load between 75 and 100 percent of the maximum sustainable load.

(*4*) The retest of any LME unit may be performed at a single load between 75 and 100 percent of the maximum sustainable load if, for the three calendar years immediately preceding the year of the retest (or, if applicable, the three ozone seasons immediately preceding the date of the retest), the applicable capacity factor requirements described in paragraph (c)(1)(iv)(I)(*3*) of this section are met.

(*5*) Alternatively, for combustion turbines, the single-load testing described in paragraphs (c)(1)(iv)(I)(*3*) and (c)(1)(iv)(I)(*4*) of this section may be performed at the highest attainable load level corresponding to the season of the year in which the testing is conducted.

(*6*) In all cases where the alternative single-load testing option described in paragraphs (c)(1)(iv)(I)(*3*) through (c)(1)(iv)(I)(*5*) of this section is used, the owner or operator shall keep records documenting that the required capacity factor requirements were met.

* * * * *

(3) * * *

(ii) * * *

(B) * * *

(*2*) American Petroleum Institute (API) Manual of Petroleum Measurement Standards, Chapter 3-Tank Gauging, Section 1A, Standard Practice for the Manual Gauging of Petroleum and Petroleum Products, Second Edition, August 2005; Section 1B-Standard Practice for Level Measurement of Liquid Hydrocarbons in Stationary Tanks by Automatic Tank Gauging, Second Edition June 2001; Section 2-Standard Practice for Gauging Petroleum and Petroleum Products in Tank Cars, First Edition, August 1995 (Reaffirmed March 2006); Section 3-Standard Practice for Level Measurement of Liquid Hydrocarbons in Stationary Pressurized Storage Tanks by Automatic Tank Gauging, First Edition June 1996 (Reaffirmed, March 2001); Section 4-Standard Practice for Level Measurement of Liquid Hydrocarbons on Marine Vessels by Automatic Tank Gauging, First Edition April 1995 (Reaffirmed, September 2000); and Section 5-Standard Practice for Level Measurement of Light Hydrocarbon Liquids Onboard Marine Vessels by Automatic Tank Gauging, First Edition March 1997 (Reaffirmed, March 2003); for § 75.19; Shop Testing of Automatic Liquid Level Gages, Bulletin 2509 B, December 1961 (Reaffirmed August 1987, October 1992) (all incorporated by reference under § 75.6 of this part); or

* * * * *

(H) For each low mass emissions unit or each low mass emissions unit in a

group of identical units, the owner or operator shall determine the cumulative quarterly unit load in megawatt hours or thousands of pounds of steam. The quarterly cumulative unit load shall be the sum of the hourly unit load values recorded under paragraph (c)(2) of this section and shall be determined using Equations LM–5 or LM–6. For a unit subject to the provisions of subpart H of this part, which is not required to report emission data on a year-round basis and elects to report only during the ozone season, the quarterly cumulative load for the second calendar quarter of the year shall include only the unit loads for the months of May and June.

$$MW_{qtr} = \sum_{all-hours} MW \qquad \text{Eq. LM-5 (for MW output)}$$

$$ST_{qtr} = \sum_{all-hours} ST \qquad \text{Eq. LM-6 (for steam output)}$$

Where:

MW_{qtr} = Sum of all unit operating loads recorded during the quarter by the unit (MWh).

$ST_{fuel-qtr}$ = Sum of all hourly steam loads recorded during the quarter by the unit (klb of steam/hr).

MW = Unit operating load for a particular unit operating hour (MWh).

ST = Unit steam load for a particular unit operating hour (klb of steam).

* * * * *

(4) * * *

(ii) NO_X mass emissions and NO_X emission rate.

(D) The quarterly and cumulative NO_X emission rate in lb/mmBtu (if required by the applicable program(s)) shall be determined as follows. Calculate the quarterly NO_X emission rate by taking the arithmetic average of all of the hourly EF_{NO_X} values. Calculate the cumulative (year-to-date) NO_X emission rate by taking the arithmetic average of the quarterly NO_X emission rates.

* * * * *

■ 14. Section 75.20 is amended by:

■ a. Adding a new sentence after the third sentence of paragraph (b) introductory text;

■ b. Revising paragraph (c)(1)(v); and

■ c. Removing paragraphs (f)(1) and (f)(2).

The revisions and additions read as follows:

§ 75.20 Initial certification and recertification procedures.

* * * * *

(b) * * * The owner or operator shall also recertify the continuous emission monitoring systems for a unit that has recommenced commercial operation following a period of long-term cold storage as defined in § 72.2 of this chapter. * * *

* * * * *

(c) * * *

(1) * * *

(v) A cycle time test, (where, for the NO_X-diluent continuous emission monitoring system, the test is performed separately on the NO_X pollutant concentration monitor and the diluent gas monitor); and

* * * * *

§ 75.21 [Amended]

■ 15. Section 75.21 is amended by removing the words ''or (e)(2)'' at the end of the first sentence of paragraph (a)(4).

■ 16. Section 75.22 is amended by:

■ a. Revising paragraph (a) introductory text;

■ b. Revising paragraphs (a)(5), (a)(6), and (a)(7);

■ c. Revising paragraph (b) introductory text;

■ d. Removing the word ''and'' at the end of paragraph (b)(3);

■ e. Revising paragraph (b)(5);

■ f. Adding paragraphs (b)(6), (b)(7), and (b)(8); and

■ g. Revising paragraph (c)(1) introductory text.

The revisions and additions read as follows:

§ 75.22 Reference test methods.

(a) The owner or operator shall use the following methods, which are found in appendix A–4 to part 60 of this chapter or have been published by ASTM, to conduct the following tests: monitoring system tests for certification or recertification of continuous emission monitoring systems and excepted monitoring systems under appendix E to this part; the emission tests required under § 75.81(c) and (d); and required quality assurance and quality control tests:

* * * * *

(5) Methods 6, 6A, 6B or 6C, and 7, 7A, 7C, 7D or 7E in appendix A–4 to part 60 of this chapter, as applicable, are the reference methods for determining SO_2 and NO_X pollutant concentrations. (Methods 6A and 6B in appendix A–4 to part 60 of this chapter may also be used to determine SO_2 emission rate in lb/mmBtu.) Methods 7, 7A, 7C, 7D, or 7E in appendix A–4 to part 60 of this chapter must be used to measure total NO_X emissions, both NO and NO_2, for purposes of this part. The owner or operator shall not use the following sections, exceptions, and options of method 7E in appendix A–4 to part 60 of this chapter:

(i) Section 7.1 of the method allowing for use of prepared calibration gas mixtures that are produced in accordance with method 205 in Appendix M of 40 CFR Part 51;

(ii) The sampling point selection procedures in section 8.1 of the method, for the emission testing of boilers and combustion turbines under appendix E to this part. The number and location of the sampling points for those applications shall be as specified in sections 2.1.2.1 and 2.1.2.2 of appendix E to this part;

(iii) Paragraph (3) in section 8.4 of the method allowing for the use of a multi-hole probe to satisfy the multipoint traverse requirement of the method;

(iv) Section 8.6 of the method allowing for the use of ''Dynamic Spiking'' as an alternative to the interference and system bias checks of the method. Dynamic spiking may be conducted (optionally) as an additional quality assurance check.

(6) Method 3A in appendix A–2 and method 7E in appendix A–4 to part 60 of this chapter are the reference methods for determining NO_X and diluent emissions from stationary gas turbines for testing under appendix E to this part.

(7) ASTM D6784–02, Standard Test Method for Elemental, Oxidized, Particle-Bound and Total Mercury in Flue Gas Generated from Coal-Fired Stationary Sources (Ontario Hydro Method) (incorporated by reference under § 75.6 of this part) is the reference method for determining Hg concentration.

(i) Alternatively, Method 29 in appendix A–8 to part 60 of this chapter may be used, with these caveats: The procedures for preparation of Hg

standards and sample analysis in sections 13.4.1.1 through 13.4.1.3 ASTM D6784–02 (incorporated by reference under § 75.6 of this part) shall be followed instead of the procedures in sections 7.5.33 and 11.1.3 of Method 29 in appendix A–8 to part 60 of this chapter, and the QA/QC procedures in section 13.4.2 of ASTM D6784–02 (incorporated by reference under § 75.6 of this part) shall be performed instead of the procedures in section 9.2.3 of Method 29 in appendix A–8 to part 60 of this chapter. The tester may also opt to use the sample recovery and preparation procedures in ASTM D6784–02 (incorporated by reference under § 75.6 of this part) instead of the Method 29 in appendix A–8 to part 60 of this chapter procedures, as follows: sections 8.2.8 and 8.2.9.1 of Method 29 in appendix A–8 to part 60 of this chapter may be replaced with sections 13.2.9.1 through 13.2.9.3 of ASTM D6784–02 (incorporated by reference under § 75.6 of this part); sections 8.2.9.2 and 8.2.9.3 of Method 29 in appendix A–8 to part 60 of this chapter may be replaced with sections 13.2.10.1 through 13.2.10.4 of ASTM D6784–02 (incorporated by reference under § 75.6 of this part); section 8.3.4 of Method 29 in appendix A–8 to part 60 of this chapter may be replaced with section 13.3.4 or 13.3.6 of ASTM D6784–02 (as appropriate) (incorporated by reference under § 75.6 of this part); and section 8.3.5 of Method 29 in appendix A–8 to part 60 of this chapter may be replaced with section 13.3.5 or 13.3.6 of ASTM D6784–02 (as appropriate) (incorporated by reference under § 75.6 of this part).

(ii) Whenever ASTM D6784–02 (incorporated by reference under § 75.6 of this part) or Method 29 in appendix A–8 to part 60 of this chapter is used, paired sampling trains are required. To validate a RATA run or an emission test run, the relative deviation (RD), calculated according to section 11.7 of appendix K to this part, must not exceed 10 percent, when the average concentration is greater than 1.0 $\mu g/m^3$. If the average concentration is ≤1.0 $\mu g/m^3$, the RD must not exceed 20 percent. The RD results are also acceptable if the absolute difference between the Hg concentrations measured by the paired trains does not exceed 0.03 $\mu g/m^3$. If the RD criterion is met, the run is valid. For each valid run, average the Hg concentrations measured by the two trains (vapor phase, only).

(iii) Two additional reference methods that may be used to measure Hg concentration are: Method 30A, ''Determination of Total Vapor Phase Mercury Emissions from Stationary Sources (Instrumental Analyzer Procedure)'' and Method 30B, ''Determination of Total Vapor Phase Mercury Emissions from Coal-Fired Combustion Sources Using Carbon Sorbent Traps''.

(iv) When Method 29 in appendix A–8 to part 60 of this chapter or ASTM D6784–02 (incorporated by reference under § 75.6 of this part) is used for the Hg emission testing required under §§ 75.81(c) and (d), locate the reference method test points according to section 8.1 of Method 30A, and if Hg stratification testing is part of the test protocol, follow the procedures in sections 8.1.3 through 8.1.3.5 of Method 30A.

(b) The owner or operator may use any of the following methods, which are found in appendix A to part 60 of this chapter or have been published by ASTM, as a reference method backup monitoring system to provide quality-assured monitor data:

* * * * *

(5) ASTM D6784–02, Standard Test Method for Elemental, Oxidized, Particle-Bound and Total Mercury in Flue Gas Generated from Coal-Fired Stationary Sources (Ontario Hydro Method) (incorporated by reference under § 75.6 of this part) for determining Hg concentration;

(6) Method 29 in appendix A–8 to part 60 of this chapter for determining Hg concentration;

(7) Method 30A for determining Hg concentration; and

(8) Method 30B for determining Hg concentration.

(c)(1) Instrumental EPA Reference Methods 3A, 6C, and 7E in appendices A–2 and A–4 of part 60 of this chapter shall be conducted using calibration gases as defined in section 5 of appendix A to this part. Otherwise, performance tests shall be conducted and data reduced in accordance with the test methods and procedures of this part unless the Administrator:

* * * * *

■ 17. Section 75.31 is amended by adding a sentence to the end of paragraph (c)(3) to read as follows:

§ 75.31 Initial missing data procedures.

* * * * *

(c) * * *

(3) * * * Alternatively, where a unit with add-on NO_X emission controls can demonstrate that the controls are operating properly during the hour, as provided in § 75.34(d), the owner or operator may substitute, as applicable, the maximum controlled NO_X emission rate (MCR) or the maximum expected NO_X concentration (MEC).

* * * * *

■ 18. Section 75.32 is amended by revising paragraph (b) to read as follows:

§ 75.32 Determination of monitor data availability for standard missing data procedures.

* * * * *

(b) The monitor data availability shall be calculated for each hour during each missing data period. The owner or operator shall record the percent monitor data availability for each hour of each missing data period to implement the missing data substitution procedures.

* * * * *

■ 19. Section 75.33 is amended by:

■ a. Revising the section heading;

■ b. Removing the word ''Whenever'' and adding in its place the word ''If'', and by removing the words ''each hour of each'' and adding in its place the words ''that hour of the'', in paragraph (b)(1) introductory text;

■ c. Removing the word ''Whenever'' and adding in its place the word ''If'', and by removing the words ''each hour of each'' and adding in its place the words ''that hour of the'', in paragraph (b)(2) introductory text;

■ d. Removing the word ''Whenever'' and adding in its place the word ''If'', and by removing the word ''each'' and adding in its place the words ''that hour of the'', in paragraphs (b)(3) and (b)(4);

■ e. Removing the word ''Whenever'' and adding in its place the word ''If'', and by removing the words ''each hour of each'' and adding in its place the words ''that hour of the'', in paragraphs (c)(1) introductory text, (c)(2) introductory text, (c)(3), and (c)(4);

■ f. Revising paragraph (c)(8)(iii);

■ g. Revising Tables 1 and 2 in paragraph (c)(8)(iv);

■ h. Removing the word ''Whenever'' and adding in its place the word ''If'', and by removing the words ''each hour of each'' and adding in its place the words ''that hour of the'', in paragraphs (d)(1) introductory text, (d)(2) introductory text, (d)(3) introductory text, and (d)(4) introductory text.

■ i. Revising Table 3 in paragraph (e)(3); and

The revisions and additions read as follows:

§ 75.33 Standard missing data procedures for SO_2, NO_X, Hg, and flow rate.

* * * * *

(c) * * *

(8) * * *

(iii) For the purposes of providing substitute data under paragraph (c)(4) of this section, a separate, fuel-specific maximum potential concentration (MPC), maximum potential NO_X emission rate (MER), or maximum

potential flow rate (MPF) value (as applicable) shall be determined for each type of fuel combusted in the unit, in a manner consistent with § 72.2 of this chapter and with section 2.1.2.1 or 2.1.4.1 of appendix A to this part. For co-firing, the MPC, MER or MPF value shall be based on the fuel with the highest emission rate or flow rate (as applicable). Furthermore, for a unit with add-on NO_X emission controls, a separate fuel-specific maximum controlled NO_X emission rate (MCR) or maximum expected NO_X concentration (MEC) value (as applicable) shall be determined for each type of fuel combusted in the unit. The exact methodology used to determine each fuel-specific MPC, MER, MEC, MCR or MPF value shall be documented in the monitoring plan for the unit or stack.

(iv) * * *

TABLE 1.—MISSING DATA PROCEDURE FOR SO_2 CEMS, CO_2 CEMS, MOISTURE CEMS, HG CEMS, AND DILUENT (CO_2 OR O_2) MONITORS FOR HEAT INPUT DETERMINATION

Trigger conditions		Calculation routines	
Monitor data availability (percent)	Duration (N) of CEMS outage (hours) [2]	Method	Lookback period
95 or more (90 or more for Hg)	N ≤ 24	Average	HB/HA.
	N > 24	For SO_2, CO_2, Hg, and H_2O **, the greater of:	
		Average	HB/HA.
		90th percentile	720 hours.*
		For O_2 and H_2O^X, the lesser of:	
		10th percentile	HB/HA.
			720 hours.*
90 or more, but below 95 (> 80 but < 90 for Hg)	N ≤ 8	Average	HB/HA.
	N > 8	For SO_2, CO_2, Hg, and H_2O **, the greater of:	
		Average	HB/HA.
		95th percentile	720 hours.*
		For O_2 and H_2O^X, the lesser of:	
		Average	HB/HA.
		5th Percentile	720 hours.*
80 or more, but below 90 (> 70 but < 80 for Hg)	N > 0	For SO_2, CO_2, Hg, and H_2O: **	
		Maximum value [1]	720 hours.*
		For O_2 and H_2O^X:	
		Minimum value [1]	720 hours.*
Below 80 (Below 70 for Hg)	N > 0	Maximum potential concentration [3] or % (for SO_2, CO_2, Hg, and H_2O **) *or*	
		Minimum potential concentration or % (for O_2 and H_2O^X).	None.

HB/HA = hour before and hour after the CEMS outage.

* Quality-assured, monitor operating hours, during unit operation. May be either fuel-specific or non-fuel-specific. For units that report data only for the ozone season, include only quality assured monitor operating hours within the ozone season in the lookback period. Use data from no earlier than 3 years prior to the missing data period.

[1] Where a unit with add-on SO_2 or Hg emission controls can demonstrate that the controls are operating properly during the missing data period, as provided in § 75.34, the unit may use the maximum controlled concentration from the previous 720 quality-assured monitor operating hours.

[2] During unit operating hours.

[3] Alternatively, where a unit with add-on SO_2 or Hg emission controls can demonstrate that the controls are operating properly during the missing data period, as provided in § 75.34, the unit may report the greater of: (a) the maximum expected SO_2 or Hg concentration or (b) 1.25 times the maximum controlled value from the previous 720 quality-assured monitor operating hours.

[X] Use this algorithm for moisture except when Equation 19–3, 19–4 or 19–8 in Method 19 in appendix A–7 to part 60 of this chapter is used for NO_X emission rate.

** Use this algorithm for moisture *only* when Equation 19–3, 19–4 or 19–8 in Method 19 in appendix A–7 to part 60 of this chapter is used for NO_X emission rate.

TABLE 2.—LOAD-BASED MISSING DATA PROCEDURE FOR NO_X-DILUENT CEMS, NO_X CONCENTRATION CEMS AND FLOW RATE CEMS

Trigger conditions		Calculation routines		
Monitor data availability (percent)	Duration (N) of CEMS outage (hours) [2]	Method	Lookback period	Load ranges
95 or more	N ≤ 24	Average	2,160 hours *	Yes.
	N > 24	The greater of:		
		Average	HB/HA	No.
		90th percentile	2,160 hours *	Yes.
90 or more, but below 95	N ≤ 8	Average	2,160 hours *	Yes.
	N > 8	The greater of:		
		Average	HB/HA	No.
		95th percentile	2,160 hours *	Yes.
80 or more, but below 90	N > 0	Maximum value [1]	2,160 hours *	Yes.

TABLE 2.—LOAD-BASED MISSING DATA PROCEDURE FOR NO_X-DILUENT CEMS, NO_X CONCENTRATION CEMS AND FLOW RATE CEMS—Continued

Trigger conditions		Calculation routines		
Monitor data availability (percent)	Duration (N) of CEMS outage (hours) [2]	Method	Lookback period	Load ranges
Below 80	N > 0	Maximum potential NO_X emission rate [3]; or maximum potential NO_X concentration [3]; or maximum potential flow rate.	None	No.

HB/HA = hour before and hour after the CEMS outage.

* Quality-assured, monitor operating hours, using data at the corresponding load range (''load bin'') for each hour of the missing data period. May be either fuel-specific or non-fuel-specific. For units that report data only for the ozone season, include only quality assured monitor operating hours within the ozone season in the lookback period. Use data from no earlier than three years prior to the missing data period.

[1] Where a unit with add-on NO_X emission controls can demonstrate that the controls are operating properly during the missing data period, as provided in § 75.34, the unit may use the maximum controlled NO_X concentration or emission rate from the previous 2,160 quality-assured monitor operating hours. Units with add-on controls that report NO_X mass emissions on a year-round basis under subpart H of this part may use separate ozone season and non-ozone season data pools to provide substitute data values, as described in § 75.34(a)(2).

[2] During unit operating hours.

[3] Alternatively, where a unit with add-on NO_X emission controls can demonstrate that the controls are operating properly during the missing data period, as provided in § 75.34, the unit may report the greater of: (a) the maximum expected NO_X concentration (or maximum controlled NO_X emission rate, as applicable); or (b) 1.25 times the maximum controlled value at the corresponding load bin, from the previous 2,160 quality-assured monitor operating hours.

* * * * *

(e) * * *

(3) * * *

TABLE 3.—NON-LOAD-BASED MISSING DATA PROCEDURE FOR NO_X-DILUENT CEMS AND NO_X CONCENTRATION CEMS

Trigger conditions		Calculation routines	
Monitor data availability (percent)	Duration (N) of CEMS outage (hours) [1]	Method	Lookback period
95 or more	N ≤ 24	Average	2,160 hours.*
	N > 24	90th percentile	2,160 hours.*
90 or more, but below 95	N ≤ 8	Average	2,160 hours.*
	N > 8	95th percentile	2,160 hours.*
80 or more, but below 90	N > 0	Maximum value [3]	2,160 hours.*
Below 80, or operational bin indeterminable	N > 0	Maximum potential NO_X emission rate [2] or maximum potential NO_X concentration [2].	None.

* If operational bins are used, the lookback period is 2,160 quality-assured, monitor operating hours, and data at the corresponding operational bin are used to provide substitute data values. If operational bins are not used, the lookback period is the previous 2,160 quality-assured monitor operating hours. For units that report data only for the ozone season, include only quality-assured monitor operating hours within the ozone season in the lookback period. Use data from no earlier than three years prior to the missing data period.

[1] During unit operation.

[2] Alternatively, where a unit with add-on NO_X emission controls can demonstrate that the controls are operating properly, as provided in § 75.34, the unit may report the greater of: (a) the maximum expected NO_X concentration, (or maximum controlled NO_X emission rate, as applicable); or (b) 1.25 times the maximum controlled value at the corresponding operational bin (if applicable), from the previous 2,160 quality-assured monitor operating hours.

[3] Where a unit with add-on NO_X emission controls can demonstrate that the controls are operating properly during the missing data period, as provided in § 75.34, the unit may use the maximum controlled NO_X concentration or emission rate from the previous 2,160 quality-assured monitor operating hours. Units with add-on controls that report NO_X mass emissions on a year-round basis under subpart H of this part may use separate ozone season and non-ozone season data pools to provide substitute data values, as described in § 75.34(a)(2).

* * * * *

■ 20. Section 75.34 is amended by:

■ a. Revising paragraph (a) introductory text;

■ b. In paragraph (a)(2)(ii) by removing the words ''and (c)(3)'' and adding in its place the words '', (c)(3) and (c)(5) of this section, and § 75.38(c),''

■ c. Revising paragraph (a)(3);

■ d. Adding paragraph (a)(5); and

■ e. In paragraph (d) by removing the words ''paragraphs (a)(1) and (a)(3) of this section,'' and adding in its place the words ''paragraphs (a)(1), (a)(3) and (a)(5) of this section; and §§ 75.31(c)(3), 75.38(c), and 75.72(c)(3),''.

The revisions and additions read as follows:

§ 75.34 Units with add-on emission controls.

(a) The owner or operator of an affected unit equipped with add-on SO_2 and/or NO_X emission controls shall provide substitute data in accordance with paragraphs (a)(1), through (a)(5) of this section for each hour in which quality-assured data from the outlet SO_2 and/or NO_X monitoring system(s) are not obtained.

* * * * *

(3) For each missing data hour in which the percent monitor data availability for SO_2 or NO_X, calculated in accordance with § 75.32, is less than 90.0 percent and is greater than or equal to 80.0 percent; and parametric data establishes that the add-on emission controls were operating properly (*i.e.* within the range of operating parameters provided in the quality assurance/

quality control program) during the hour, the owner or operator may:

(i) Replace the maximum SO_2 concentration recorded in the 720 quality-assured monitor operating hours immediately preceding the missing data period, with the maximum controlled SO2 concentration recorded in the previous 720 quality-assured monitor operating hours; or

(ii) Replace the maximum NO_X concentration(s) or NO_X emission rate(s) from the appropriate load bin(s) (based on a lookback through the 2,160 quality-assured monitor operating hours immediately preceding the missing data period), with the maximum controlled NO_X concentration(s) or emission rate(s) from the appropriate load bin(s) in the same 2,160 quality-assured monitor operating hour lookback period.

* * * * *

(5) For each missing data hour in which the percent monitor data availability for SO_2 or NO_X, calculated in accordance with § 75.32, is below 80.0 percent and parametric data establish that the add-on emission controls were operating properly (*i.e.* within the range of operating parameters provided in the quality assurance/quality control program),in lieu of reporting the maximum potential value, the owner or operator may substitute, as applicable, the greater of:

(i) The maximum expected SO_2 concentration or 1.25 times the maximum hourly controlled SO_2 concentration recorded in the previous 720 quality-assured monitor operating hours;

(ii) The maximum expected NO_X concentration or 1.25 times the maximum hourly controlled NO_X concentration recorded in the previous 2,160 quality-assured monitor operating hours at the corresponding unit load range or operational bin;

(iii) The maximum controlled hourly NO_X emission rate (MCR) or 1.25 times the maximum hourly controlled NO_X emission rate recorded in the previous 2,160 quality-assured monitor operating hours at the corresponding unit load range or operational bin;

(iv) For the purposes of implementing the missing data options in paragraphs (a)(5)(i) through (a)(5)(iii) of this section, the maximum expected SO_2 and NO_X concentrations shall be determined, respectively, according to sections 2.1.1.2 and 2.1.2.2 of appendix A to this part. The MCR shall be calculated according to the basic procedure described in section 2.1.2.1(b) of appendix A to this part, except that the words ''maximum potential NO_X emission rate (MER)'' shall be replaced with the words ''maximum controlled NO_X emission rate (MCR)'' and the NO_X MEC shall be used instead of the NO_X MPC.

* * * * *

■ 20. Section 75.38 is amended by revising paragraphs (a) and (c) to read as follows.

§ 75.38 Standard missing data procedures for Hg CEMS.

(a) Once 720 quality assured monitor operating hours of Hg concentration data have been obtained following initial certification, the owner or operator shall provide substitute data for Hg concentration in accordance with the procedures in (75.33(b)(1) through (b)(4), except that the term ''Hg concentration'' shall apply rather than ''SO_2 concentration,'' the term ''Hg concentration monitoring system'' shall apply rather than ''SO_2 pollutant concentration monitor,'' the term ''maximum potential Hg concentration, as defined in section 2.1.7 of appendix A to this part'' shall apply, rather than ''maximum potential SO_2 concentration'', and the percent monitor data availability trigger conditions prescribed for Hg in Table 1 of § 75.33 shall apply rather than the trigger conditions prescribed for SO_2.

* * * * *

(c) For units with FGD systems or add-on Hg emission controls, when the percent monitor data availability is less than 80.0 percent and is greater than or equal to 70.0 percent, and a missing data period occurs, consistent with § 75.34(a)(3), for each missing data hour in which the FGD or Hg emission controls are documented to be operating properly, the owner or operator may report the maximum controlled Hg concentration recorded in the previous 720 quality-assured monitor operating hours. In addition, when the percent monitor data availability is less than 70.0 percent and a missing data period occurs, consistent with § 75.34(a)(5), for each missing data hour in which the FGD or Hg emission controls are documented to be operating properly, the owner or operator may report the greater of the maximum expected Hg concentration (MEC) or 1.25 times the maximum controlled Hg concentration recorded in the previous 720 quality-assured monitor operating hours. The MEC shall be determined in accordance with section 2.1.7.1 of appendix A to this part.

■ 21. Section 75.39 is amended by:

■ a. Revising paragraph (a);

■ b. Revising paragraph (b);

■ c. Revising paragraph (c);

■ d. Revising paragraph (d); and

■ e. Adding paragraph (f).

The revisions and additions read as follows:

§ 75.39 Missing data procedures for sorbent trap monitoring systems.

(a) If a primary sorbent trap monitoring system has not been certified by the applicable compliance date specified under a State or Federal Hg mass emission reduction program that adopts the requirements of subpart I of this part, and if quality-assured Hg concentration data from a certified backup Hg monitoring system, reference method, or approved alternative monitoring system are unavailable, the owner or operator shall report the maximum potential Hg concentration, as defined in section 2.1.7 of appendix A to this part, until the primary system is certified.

(b) For a certified sorbent trap system, a missing data period will occur in the following circumstances, unless quality-assured Hg concentration data from a certified backup Hg CEMS, sorbent trap system, reference method, or approved alternative monitoring system are available:

(1) A gas sample is not extracted from the stack during unit operation (e.g., during a monitoring system malfunction or when the system undergoes maintenance); or

(2) The results of the Hg analysis for the paired sorbent traps are missing or invalid (as determined using the quality assurance procedures in appendix K to this part). The missing data period begins with the hour in which the paired sorbent traps for which the Hg analysis is missing or invalid were put into service. The missing data period ends at the first hour in which valid Hg concentration data are obtained with another pair of sorbent traps (i.e., the hour at which this pair of traps was placed in service), or with a certified backup Hg CEMS, reference method, or approved alternative monitoring system.

(c) *Initial missing data procedures.* Use the missing data procedures in § 75.31(b) until 720 hours of quality-assured Hg concentration data have been collected with the sorbent trap monitoring system(s), following initial certification.

(d) *Standard missing data procedures.* Once 720 quality-assured hours of data have been obtained with the sorbent trap system(s), begin reporting the percent monitor data availability in accordance with § 75.32 and switch from the initial missing data procedures in paragraph (c) of this section to the standard missing data procedures in § 75.38.

* * * * *

(f) In cases where the owner or operator elects to use a primary Hg CEMS and a certified redundant (or non-redundant) backup sorbent trap monitoring system (or vice-versa), when both the primary and backup monitoring systems are out-of-service and quality-assured Hg concentration data from a temporary like-kind replacement analyzer, reference method, or approved alternative monitoring system are unavailable, the previous 720 quality-assured monitor operating hours reported in the electronic quarterly report under § 75.64 shall be used for the required missing data lookback, irrespective of whether these data were recorded by the Hg CEMS, the sorbent trap system, a temporary like-kind replacement analyzer, a reference method, or an approved alternative monitoring system.

■ 22. Section 75.53 is amended by:
■ a. Revising paragraph (a)(1);
■ b. Removing the phrase ''(d) or (f)'' and adding in its place the phrase ''(f) or (h)'' in the second sentence of paragraph (a)(2);
■ c. Adding paragraph (e)(1)(xiv); and
■ d. Adding paragraphs (g) and (h).

The revisions and additions read as follows:

§ 75.53 Monitoring plan.

(a) * * *

(1) The provisions of paragraphs (e) and (f) of this section shall be met through December 31, 2008. The owner or operator shall meet the requirements of paragraphs (a), (b), (e), and (f) of this section through December 31, 2008, except as otherwise provided in paragraph (g) of this section. On and after January 1, 2009, the owner or operator shall meet the requirements of paragraphs (a), (b), (g), and (h) of this section only. In addition, the provisions in paragraphs (g) and (h) of this section that support a regulatory option provided in another section of this part must be followed if the regulatory option is used prior to January 1, 2009.

* * * * *

(e) * * *

(1) * * *

(xiv) For each unit with a flow monitor installed on a rectangular stack or duct, if a wall effects adjustment factor (WAF) is determined and applied to the hourly flow rate data:

(A) Stack or duct width at the test location, ft;

(B) Stack or duct depth at the test location, ft;

(C) Wall effects adjustment factor (WAF), to the nearest 0.0001;

(D) Method of determining the WAF;

(E) WAF Effective date and hour;

(F) WAF no longer effective date and hour (if applicable);

(G) WAF determination date;

(H) Number of WAF test runs;

(I) Number of Method 1 traverse points in the WAF test;

(J) Number of test ports in the WAF test; and

(K) Number of Method 1 traverse points in the reference flow RATA.

* * * * *

(g) *Contents of the monitoring plan.* The requirements of paragraphs (g) and (h) of this section shall be met on and after January 1, 2009. Notwithstanding this requirement, the provisions of paragraphs (g) and (h) of this section may be implemented prior to January 1, 2009, as follows. In 2008, the owner or operator may opt to record and report the monitoring plan information in paragraphs (g) and (h) of this section, in lieu of recording and reporting the information in paragraphs (e) and (f) of this section. Each monitoring plan shall contain the information in paragraph (g)(1) of this section in electronic format and the information in paragraph (g)(2) of this section in hardcopy format. Electronic storage of all monitoring plan information, including the hardcopy portions, is permissible provided that a paper copy of the information can be furnished upon request for audit purposes.

(1) *Electronic.* (i) The facility ORISPL number developed by the Department of Energy and used in the National Allowance Data Base (or equivalent facility ID number assigned by EPA, if the facility does not have an ORISPL number). Also provide the following information for each unit and (as applicable) for each common stack and/or pipe, and each multiple stack and/or pipe involved in the monitoring plan:

(A) A representation of the exhaust configuration for the units in the monitoring plan. Provide the ID number of each unit and assign a unique ID number to each common stack, common pipe multiple stack and/or multiple pipe associated with the unit(s) represented in the monitoring plan. For common and multiple stacks and/or pipes, provide the activation date and deactivation date (if applicable) of each stack and/or pipe;

(B) Identification of the monitoring system location(s) (e.g., at the unit-level, on the common stack, at each multiple stack, etc.). Provide an indicator (''flag'') if the monitoring location is at a bypass stack or in the ductwork (breeching);

(C) The stack exit height (ft) above ground level and ground level elevation above sea level, and the inside cross-sectional area (ft^2) at the flue exit and at the flow monitoring location (for units with flow monitors, only). Also use appropriate codes to indicate the material(s) of construction and the shape(s) of the stack or duct cross-section(s) at the flue exit and (if applicable) at the flow monitor location;

(D) The type(s) of fuel(s) fired by each unit. Indicate the start and (if applicable) end date of combustion for each type of fuel, and whether the fuel is the primary, secondary, emergency, or startup fuel;

(E) The type(s) of emission controls that are used to reduce SO_2, NO_X, Hg, and particulate emissions from each unit. Also provide the installation date, optimization date, and retirement date (if applicable) of the emission controls, and indicate whether the controls are an original installation;

(F) Maximum hourly heat input capacity of each unit; and

(G) A non-load based unit indicator (if applicable) for units that do not produce electrical or thermal output.

(ii) For each monitored parameter (e.g., SO_2, NO_X, flow, etc.) at each monitoring location, specify the monitoring methodology and the missing data approach for the parameter. If the unmonitored bypass stack approach is used for a particular parameter, indicate this by means of an appropriate code. Provide the activation date/hour, and deactivation date/hour (if applicable) for each monitoring methodology and each missing data approach.

(iii) For each required continuous emission monitoring system, each fuel flowmeter system, each continuous opacity monitoring system, and each sorbent trap monitoring system (as defined in § 72.2 of this chapter), identify and describe the major monitoring components in the monitoring system (e.g., gas analyzer, flow monitor, opacity monitor, moisture sensor, fuel flowmeter, DAHS software, etc.). Other important components in the system (e.g., sample probe, PLC, data logger, etc.) may also be represented in the monitoring plan, if necessary. Provide the following specific information about each component and monitoring system:

(A) For each required monitoring system:

(*1*) Assign a unique, 3-character alphanumeric identification code to the system;

(*2*) Indicate the parameter monitored by the system;

(*3*) Designate the system as a primary, redundant backup, non-redundant backup, data backup, or reference method backup system, as provided in § 75.10(e); and

(*4*) Indicate the system activation date/hour and deactivation date/hour (as applicable).

(B) For each component of each monitoring system represented in the monitoring plan:

(*1*) Assign a unique, 3-character alphanumeric identification code to the component;

(*2*) Indicate the manufacturer, model and serial number;

(*3*) Designate the component type;

(*4*) For dual-span applications, indicate whether the analyzer component ID represents a high measurement scale, a low scale, or a dual range;

(*5*) For gas analyzers, indicate the moisture basis of measurement;

(*6*) Indicate the method of sample acquisition or operation, (e.g., extractive pollutant concentration monitor or thermal flow monitor); and

(*7*) Indicate the component activation date/hour and deactivation date/hour (as applicable).

(iv) Explicit formulas, using the component and system identification codes for the primary monitoring system, and containing all constants and factors required to derive the required mass emissions, emission rates, heat input rates, etc. from the hourly data recorded by the monitoring systems. Formulas using the system and component ID codes for backup monitoring systems are required only if different formulas for the same parameter are used for the primary and backup monitoring systems (e.g., if the primary system measures pollutant concentration on a different moisture basis from the backup system). Provide the equation number or other appropriate code for each emissions formula (e.g., use code F–1 if Equation F–1 in appendix F to this part is used to calculate SO_2 mass emissions). Also identify each emissions formula with a unique three character alphanumeric code. The formula effective start date/hour and inactivation date/hour (as applicable) shall be included for each formula. The owner or operator of a unit for which the optional low mass emissions excepted methodology in § 75.19 is being used is not required to report such formulas.

(v) For each parameter monitored with CEMS, provide the following information:

(A) Measurement scale (high or low);

(B) Maximum potential value (and method of calculation). If NO_X emission rate in lb/mmBtu is monitored, calculate and provide the maximum potential NO_X emission rate in addition to the maximum potential NO_X concentration;

(C) Maximum expected value (if applicable) and method of calculation;

(D) Span value(s) and full-scale measurement range(s);

(E) Daily calibration units of measure;

(F) Effective date/hour, and (if applicable) inactivation date/hour of each span value;

(G) An indication of whether dual spans are required; and

(H) The default high range value (if applicable) and the maximum allowable low-range value for this option.

(vi) If the monitoring system or excepted methodology provides for the use of a constant, assumed, or default value for a parameter under specific circumstances, then include the following information for each such value for each parameter:

(A) Identification of the parameter;

(B) Default, maximum, minimum, or constant value, and units of measure for the value;

(C) Purpose of the value;

(D) Indicator of use, i.e., during controlled hours, uncontrolled hours, or all operating hours;

(E) Type of fuel;

(F) Source of the value;

(G) Value effective date and hour;

(H) Date and hour value is no longer effective (if applicable); and

(I) For units using the excepted methodology under § 75.19, the applicable SO_2 emission factor.

(vii) Unless otherwise specified in section 6.5.2.1 of appendix A to this part, for each unit or common stack on which hardware CEMS are installed:

(A) Maximum hourly gross load (in MW, rounded to the nearest MW, or steam load in 1000 lb/hr (i.e., klb/hr), rounded to the nearest klb/hr, or thermal output in mmBtu/hr, rounded to the nearest mmBtu/hr), for units that produce electrical or thermal output;

(B) The upper and lower boundaries of the range of operation (as defined in section 6.5.2.1 of appendix A to this part), expressed in megawatts, thousands of lb/hr of steam, mmBtu/hr of thermal output, or ft/sec (as applicable);

(C) Except for peaking units, identify the most frequently and second most frequently used load (or operating) levels (i.e., low, mid, or high) in accordance with section 6.5.2.1 of appendix A to this part, expressed in megawatts, thousands of lb/hr of steam, mmBtu/hr of thermal output, or ft/sec (as applicable);

(D) Except for peaking units, an indicator of whether the second most frequently used load (or operating) level is designated as normal in section 6.5.2.1 of appendix A to this part;

(E) The date of the data analysis used to determine the normal load (or operating) level(s) and the two most frequently-used load (or operating) levels (as applicable); and

(F) Activation and deactivation dates and hours, when the maximum hourly gross load, boundaries of the range of operation, normal load (or operating) level(s) or two most frequently-used load (or operating) levels change and are updated.

(viii) For each unit for which CEMS are not installed:

(A) Maximum hourly gross load (in MW, rounded to the nearest MW, or steam load in klb/hr, rounded to the nearest klb/hr, or steam load in mmBtu/hr, rounded to the nearest mmBtu/hr);

(B) The upper and lower boundaries of the range of operation (as defined in section 6.5.2.1 of appendix A to this part), expressed in megawatts, mmBtu/hr of thermal output, or thousands of lb/hr of steam;

(C) Except for peaking units and units using the low mass emissions excepted methodology under § 75.19, identify the load level designated as normal, pursuant to section 6.5.2.1 of appendix A to this part, expressed in megawatts, mmBtu/hr of thermal output, or thousands of lb/hr of steam;

(D) The date of the load analysis used to determine the normal load level (as applicable); and

(E) Activation and deactivation dates and hours, when the maximum hourly gross load, boundaries of the range of operation, or normal load level change and are updated.

(ix) For each unit with a flow monitor installed on a rectangular stack or duct, if a wall effects adjustment factor (WAF) is determined and applied to the hourly flow rate data:

(A) Stack or duct width at the test location, ft;

(B) Stack or duct depth at the test location, ft;

(C) Wall effects adjustment factor (WAF), to the nearest 0.0001;

(D) Method of determining the WAF;

(E) WAF Effective date and hour;

(F) WAF no longer effective date and hour (if applicable);

(G) WAF determination date;

(H) Number of WAF test runs;

(I) Number of Method 1 traverse points in the WAF test;

(J) Number of test ports in the WAF test; and

(K) Number of Method 1 traverse points in the reference flow RATA.

(2) *Hardcopy.* (i) Information, including (as applicable): Identification of the test strategy; protocol for the relative accuracy test audit; other relevant test information; calibration gas levels (percent of span) for the calibration error test and linearity

check; calculations for determining maximum potential concentration, maximum expected concentration (if applicable), maximum potential flow rate, maximum potential NO_X emission rate, and span; and apportionment strategies under §§ 75.10 through 75.18.

(ii) Description of site locations for each monitoring component in the continuous emission or opacity monitoring systems, including schematic diagrams and engineering drawings specified in paragraphs (e)(2)(iv) and (e)(2)(v) of this section and any other documentation that demonstrates each monitor location meets the appropriate siting criteria.

(iii) A data flow diagram denoting the complete information handling path from output signals of CEMS components to final reports.

(iv) For units monitored by a continuous emission or opacity monitoring system, a schematic diagram identifying entire gas handling system from boiler to stack for all affected units, using identification numbers for units, monitoring systems and components, and stacks corresponding to the identification numbers provided in paragraphs (g)(1)(i) and (g)(1)(iii) of this section. The schematic diagram must depict stack height and the height of any monitor locations. Comprehensive and/or separate schematic diagrams shall be used to describe groups of units using a common stack.

(v) For units monitored by a continuous emission or opacity monitoring system, stack and duct engineering diagrams showing the dimensions and location of fans, turning vanes, air preheaters, monitor components, probes, reference method sampling ports, and other equipment that affects the monitoring system location, performance, or quality control checks.

(h) *Contents of monitoring plan for specific situations.* The following additional information shall be included in the monitoring plan for the specific situations described:

(1) For each gas-fired unit or oil-fired unit for which the owner or operator uses the optional protocol in appendix D to this part for estimating heat input and/or SO_2 mass emissions, or for each gas-fired or oil-fired peaking unit for which the owner/operator uses the optional protocol in appendix E to this part for estimating NO_X emission rate (using a fuel flowmeter), the designated representative shall include the following additional information for each fuel flowmeter system in the monitoring plan:

(i) *Electronic.* (A) Parameter monitored;

(B) Type of fuel measured, maximum fuel flow rate, units of measure, and basis of maximum fuel flow rate (i.e., upper range value or unit maximum) for each fuel flowmeter;

(C) Test method used to check the accuracy of each fuel flowmeter;

(D) Monitoring system identification code;

(E) The method used to demonstrate that the unit qualifies for monthly GCV sampling or for daily or annual fuel sampling for sulfur content, as applicable; and

(F) Activation date/hour and (if applicable) inactivation date/hour for the fuel flowmeter system;

(ii) *Hardcopy.* (A) A schematic diagram identifying the relationship between the unit, all fuel supply lines, the fuel flowmeter(s), and the stack(s). The schematic diagram must depict the installation location of each fuel flowmeter and the fuel sampling location(s). Comprehensive and/or separate schematic diagrams shall be used to describe groups of units using a common pipe;

(B) For units using the optional default SO_2 emission rate for ''pipeline natural gas'' or ''natural gas'' in appendix D to this part, the information on the sulfur content of the gaseous fuel used to demonstrate compliance with either section 2.3.1.4 or 2.3.2.4 of appendix D to this part;

(C) For units using the 720 hour test under 2.3.6 of Appendix D of this part to determine the required sulfur sampling requirements, report the procedures and results of the test; and

(D) For units using the 720 hour test under 2.3.5 of Appendix D of this part to determine the appropriate fuel GCV sampling frequency, report the procedures used and the results of the test.

(2) For each gas-fired peaking unit and oil-fired peaking unit for which the owner or operator uses the optional procedures in appendix E to this part for estimating NO_X emission rate, the designated representative shall include in the monitoring plan:

(i) *Electronic.* Unit operating and capacity factor information demonstrating that the unit qualifies as a peaking unit, as defined in § 72.2 of this chapter for the current calendar year or ozone season, including: capacity factor data for three calendar years (or ozone seasons) as specified in the definition of peaking unit in § 72.2 of this chapter; the method of qualification used; and an indication of whether the data are actual or projected data.

(ii) *Hardcopy.* (A) A protocol containing methods used to perform the baseline or periodic NO_X emission test; and

(B) Unit operating parameters related to NO_X formation by the unit.

(3) For each gas-fired unit and diesel-fired unit or unit with a wet flue gas pollution control system for which the designated representative claims an opacity monitoring exemption under § 75.14, the designated representative shall include in the hardcopy monitoring plan the information specified under § 75.14(b), (c), or (d), demonstrating that the unit qualifies for the exemption.

(4) For each unit using the low mass emissions excepted methodology under § 75.19 the designated representative shall include the following additional information in the monitoring plan that accompanies the initial certification application:

(i) *Electronic.* For each low mass emissions unit, report the results of the analysis performed to qualify as a low mass emissions unit under § 75.19(c). This report will include either the previous three years actual or projected emissions. The following items should be included:

(A) Current calendar year of application;

(B) Type of qualification;

(C) Years one, two, and three;

(D) Annual and/or ozone season measured, estimated or projected NO_X mass emissions for years one, two, and three;

(E) Annual measured, estimated or projected SO_2 mass emissions (if applicable) for years one, two, and three; and

(F) Annual or ozone season operating hours for years one, two, and three.

(ii) *Hardcopy.* (A) A schematic diagram identifying the relationship between the unit, all fuel supply lines and tanks, any fuel flowmeter(s), and the stack(s). Comprehensive and/or separate schematic diagrams shall be used to describe groups of units using a common pipe;

(B) For units which use the long term fuel flow methodology under § 75.19(c)(3), the designated representative must provide a diagram of the fuel flow to each affected unit or group of units and describe in detail the procedures used to determine the long term fuel flow for a unit or group of units for each fuel combusted by the unit or group of units;

(C) A statement that the unit burns only gaseous fuel(s) and/or fuel oil and a list of the fuels that are burned or a statement that the unit is projected to burn only gaseous fuel(s) and/or fuel oil and a list of the fuels that are projected to be burned;

(D) A statement that the unit meets the applicability requirements in § 75.19(a) and (b); and

(E) Any unit historical actual, estimated and projected emissions data and calculated emissions data demonstrating that the affected unit qualifies as a low mass emissions unit under § 75.19(a) and 75.19(b).

(5) For qualification as a gas-fired unit, as defined in § 72.2 of this part, the designated representative shall include in the monitoring plan, in electronic format, the following: Current calendar year, fuel usage data for three calendar years (or ozone seasons) as specified in the definition of gas-fired in § 72.2 of this part, the method of qualification used, and an indication of whether the data are actual or projected data.

(6) For each monitoring location with a stack flow monitor that is exempt from performing 3-load flow RATAs (peaking units, bypass stacks, or by petition) the designated representative shall include in the monitoring plan an indicator of exemption from 3-load flow RATA using the appropriate exemption code.

■ 23. Section 75.57 is amended by:

■ a. Adding the phrase ‘‘, or mmBtu/hr of thermal output, rounded to the nearest mmBtu/hr’’ after the phrase ‘‘rounded to the nearest 1000 lb/hr’’, in paragraph (b)(3);

■ b. Revising Table 4a in paragraph (c)(4)(iv);

■ c. Removing the word ‘‘hundredth’’ and adding in its place the word ‘‘tenth’’ in paragraph (i)(1)(iv); and

■ d. Removing the words ‘‘, § 75.12(b),’’ from paragraphs (i)(2) and (j)(2).

The revisions read as follows:

§ 75.57 General recordkeeping provisions.

* * * * *

(c) * * *

(4) * * *

(iv) * * *

TABLE 4A.—CODES FOR METHOD OF EMISSIONS AND FLOW DETERMINATION

Code	Hourly emissions/flow measurement or estimation method
1	Certified primary emission/flow monitoring system.
2	Certified backup emission/flow monitoring system.
3	Approved alternative monitoring system.
4	Reference method: SO_2: Method 6C. Flow: Method 2 or its allowable alternatives under appendix A to part 60 of this chapter. NO_X: Method 7E. CO_2 or O_2: Method 3A.
5	For units with add-on SO_2 and/or NO_X emission controls: SO_2 concentration or NO_X emission rate estimate from Agency preapproved parametric monitoring method.
6	Average of the hourly SO_2 concentrations, CO_2 concentrations, O_2 concentrations, NO_X concentrations, flow rates, moisture percentages or NO_X emission rates for the hour before and the hour following a missing data period.
7	Initial missing data procedures used. Either: (a) the average of the hourly SO_2 concentration, CO_2 concentration, O_2 concentration, or moisture percentage for the hour before and the hour following a missing data period; or (b) the arithmetic average of all NO_X concentration, NO_X emission rate, or flow rate values at the corresponding load range (or a higher load range), or at the corresponding operational bin (non-load-based units, only); or (c) the arithmetic average of all previous NO_X concentration, NO_X emission rate, or flow rate values (non-load-based units, only).
8	90th percentile hourly SO_2 concentration, CO_2 concentration, NO_X concentration, flow rate, moisture percentage, or NO_X emission rate or 10th percentile hourly O_2 concentration or moisture percentage in the applicable lookback period (moisture missing data algorithm depends on which equations are used for emissions and heat input).
9	95th percentile hourly SO_2 concentration, CO_2 concentration, NO_X concentration, flow rate, moisture percentage, or NO_X emission rate or 5th percentile hourly O_2 concentration or moisture percentage in the applicable lookback period (moisture missing data algorithm depends on which equations are used for emissions and heat input).
10	Maximum hourly SO_2 concentration, CO_2 concentration, NO_X concentration, flow rate, moisture percentage, or NO_X emission rate or minimum hourly O_2 concentration or moisture percentage in the applicable lookback period (moisture missing data algorithm depends on which equations are used for emissions and heat input).
11	Average of hourly flow rates, NO_X concentrations or NO_X emission rates in corresponding load range, for the applicable lookback period. For non-load-based units, report either the average flow rate, NO_X concentration or NO_X emission rate in the applicable lookback period, or the average flow rate or NO_X value at the corresponding operational bin (if operational bins are used).
12	Maximum potential concentration of SO_2, maximum potential concentration of CO_2, maximum potential concentration of NO_X maximum potential flow rate, maximum potential NO_X emission rate, maximum potential moisture percentage, minimum potential O_2 concentration or minimum potential moisture percentage, as determined using § 72.2 of this chapter and section 2.1 of appendix A to this part (moisture missing data algorithm depends on which equations are used for emissions and heat input).
13	Maximum expected concentration of SO_2, maximum expected concentration of NO_X, maximum expected Hg concentration, or maximum controlled NO_X emission rate. (*See* § 75.34(a)(5)).
14	Diluent cap value (if the cap is replacing a CO_2 measurement, use 5.0 percent for boilers and 1.0 percent for turbines; if it is replacing an O_2 measurement, use 14.0 percent for boilers and 19.0 percent for turbines).
15	1.25 times the maximum hourly controlled SO_2 concentration, Hg concentration, NO_X concentration at the corresponding load or operational bin, or NO_X emission rate at the corresponding load or operational bin, in the applicable lookback period (*See* § 75.34(a)(5)).
16	SO_2 concentration value of 2.0 ppm during hours when only ‘‘very low sulfur fuel’’, as defined in § 72.2 of this chapter, is combusted.
17	Like-kind replacement non-redundant backup analyzer.
19	200 percent of the MPC; default high range value.
20	200 percent of the full-scale range setting (full-scale exceedance of high range).
21	Negative hourly CO_2 concentration, SO_2 concentration, NO_X concentration, percent moisture, or NO_X emission rate replaced with zero.
22	Hourly average SO_2 or NO_X concentration, measured by a certified monitor at the control device inlet (units with add-on emission controls only).
23	Maximum potential SO_2 concentration, NO_X concentration, CO_2 concentration, NO_X emission rate or flow rate, or minimum potential O_2 concentration or moisture percentage, for an hour in which flue gases are discharged through an unmonitored bypass stack.
24	Maximum expected NO_X concentration, or maximum controlled NO_X emission rate for an hour in which flue gases are discharged downstream of the NO_X emission controls through an unmonitored bypass stack, and the add-on NO_X emission controls are confirmed to be operating properly.
25	Maximum potential NO_X emission rate (MER). (Use only when a NO_X concentration full-scale exceedance occurs and the diluent monitor is unavailable.)

TABLE 4A.—CODES FOR METHOD OF EMISSIONS AND FLOW DETERMINATION—Continued

Code	Hourly emissions/flow measurement or estimation method
26	1.0 mmBtu/hr substituted for Heat Input Rate for an operating hour in which the calculated Heat Input Rate is zero or negative.
32	Hourly Hg concentration determined from analysis of a single trap multiplied by a factor of 1.111 when one of the paired traps is invalidated or damaged (*See* Appendix K, section 8).
33	Hourly Hg concentration determined from the trap resulting in the higher Hg concentration when the relative deviation criterion for the paired traps is not met (*See* Appendix K, section 8).
40	Fuel specific default value (or prorated default value) used for the hour.
54	Other quality assured methodologies approved through petition. These hours are included in missing data lookback and are treated as unavailable hours for percent monitor availability calculations.
55	Other substitute data approved through petition. These hours are not included in missing data lookback and are treated as unavailable hours for percent monitor availability calculations.

* * * * *

■ 24. Section 75.58 is amended by:
■ a. Revising paragraph (b)(3) introductory text;
■ b. Removing paragraphs (b)(3)(iii) and (b)(3)(iv);
■ c. Removing the word ''and'' from paragraph (c)(1)(xii);
■ d. Removing the period and adding in its place a semicolon and adding the word ''and'' to the end of the paragraph, in paragraph (c)(1)(xiii);
■ e. Adding paragraph (c)(1)(xiv);
■ f. Removing the period and adding in its place a semicolon and adding the word ''and'' to the end of the paragraph, in paragraph (c)(4)(x);
■ g. Adding paragraph (c)(4)(xi);
■ h. Removing the words ''rounded to the nearest hundredth for diesel fuel'' and adding in its place the words ''rounded to either the nearest hundredth, or nearest ten-thousandth for diesel fuels'' in paragraph (c)(5)(ii);
■ i. Removing the word ''and'' after the semicolon in paragraph (d)(1)(ix).
■ j. Removing the period and adding in its place a semicolon and adding the word ''and'' to the end of the paragraph, in paragraph (d)(1)(x);
■ k. Adding paragraph (d)(1)(xi);
■ l. Removing the word ''and'' after the semicolon in paragraph (d)(2)(ix);
■ m. Removing the period and adding in its place a semicolon and adding the word ''and'' to the end of the paragraph, in paragraph (d)(2)(x);
■ n. Adding paragraph (d)(2)(xi);
■ o. Revising paragraph (f)(1)(iii);
■ p. Removing the word ''and'' at the end of paragraph (f)(1)(xi);
■ q. Removing the period and adding in its place a semicolon at the end of paragraph (f)(1)(xii);
■ r. Adding paragraphs (f)(1)(xiii) and (f)(1)(xiv); and
■ s. Removing the word ''Component'' and adding in its place the word ''Monitoring'', in paragraph (f)(2)(x).

The revisions and additions read as follows:

§ 75.58 General recordkeeping provisions for specific situations.

* * * * *

(b) * * *

(3) Except as otherwise provided in § 75.34(d), for units with add-on SO_2 or NO_X emission controls following the provisions of § 75.34(a)(1), (a)(2), (a)(3) or (a)(5), and for units with add-on Hg emission controls, the owner or operator shall record:

* * * * *

(c) * * *

(1) * * *

(xiv) Heat input formula ID and SO_2 Formula ID (required beginning January 1, 2009).

* * * * *

(4) * * *

(xi) Heat input formula ID and SO_2 Formula ID (required beginning January 1, 2009).

* * * * *

(d) * * *

(1) * * *

(xi) Heat input rate formula ID (required beginning January 1, 2009).

(2) * * *

(xi) Heat input rate formula ID (required beginning January 1, 2009).

* * * * *

(f) * * *

(1) * * *

(iii) Fuel type (pipeline natural gas, natural gas, other gaseous fuel, residual oil, or diesel fuel). If more than one type of fuel is combusted in the hour, either:

(A) Indicate the fuel type which results in the highest emission factors for NO_X (this option is in effect through December 31, 2008); or

(B) Indicate the fuel type resulting in the highest emission factor for each parameter (SO_2, NO_X emission rate, and CO_2) separately (this option is required on and after January 1, 2009);

* * * * *

(xiii) Base or peak load indicator (as applicable); and

(xiv) Multiple fuel flag.

* * * * *

■ 25. Section 75.59 is amended by:
■ a. Adding the phrase ''(on and after January 1, 2009, only the component identification code is required)'' after the word ''code'', in paragraph (a)(1)(i);
■ b. Revising paragraph (a)(1)(viii);
■ c. Removing the phrase ''For the qualifying test for off-line calibration, the owner or operator shall indicate'' and adding in its place the phrase ''Indication of'', in paragraph (a)(1)(xi);
■ d. Adding the phrase ''(after January 1, 2009, only the component identification code is required)'' after the word ''code'', in paragraph (a)(2)(i);
■ e. Adding the phrase ''(on and after January 1, 2009, only the component identification code is required)'' after the word ''code'', in paragraph (a)(3)(i);
■ f. Adding the phrase ''(only span scale is required on and after January 1, 2009)'' after the word ''scale'', in paragraph (a)(3)(ii);
■ g. Adding the phrase ''(on and after January 1, 2009, only the system identification code is required)'' after the word ''code'', in paragraph (a)(4)(i);
■ h. Removing the word ''and'' after the semicolon at the end of paragraph (a)(4)(vi)(L);
■ i. Removing the period and adding in its place a semicolon and adding the word ''and'' at the end of paragraph (a)(4)(vi)(M);
■ j. Adding paragraph (a)(4)(vi)(N);
■ k. Removing the word ''and'' after the semicolon, at the end of paragraph (a)(4)(vii)(K);
■ l. Removing the period and adding in its place a semicolon and adding the word ''and'' at the end of paragraph (a)(4)(vii)(L);
■ m. Adding paragraph (a)(4)(vii)(M);
■ n. Revising paragraph (a)(6) introductory text;
■ o. Adding the phrase ''(on and after January 1, 2009, only the component identification code is required)'' after the word ''code'', in paragraph (a)(6)(i);
■ p. Removing the phrase ''Cycle time result for the entire system'' and adding in its place the phrase ''Total cycle time'', in paragraph (a)(6)(ix);
■ q. Revising the heading of reserved paragraph (a)(7)(viii);
■ r. Adding paragraphs (a)(7)(ix) and (a)(7)(x);
■ s. Revising paragraph (a)(8);

■ t. Removing and reserving paragraph (a)(12)(iii);
■ u. Removing the number ''(2)'' from the paragraph identifier ''§ 75.64(a)(2)'' in the second sentence of paragraph (a)(13);
■ v. Adding the phrase ''(on and after January 1, 2009, only the component identification code is required)'' after the word ''tested'', in paragraphs (b)(1)(ii) and (b)(2)(i);
■ w. Adding the phrase ''(on and after January 1, 2009, only the monitoring system identification code is required)'' after the word ''code'', in paragraph (b)(4)(i)(A);
■ x. Removing the word ''and'' after the semicolon at the end of paragraph (b)(4)(i)(H);
■ y. Removing the period and adding in its place a semicolon and adding the word ''and'' at the end of paragraph (b)(4)(i)(I);
■ z. Adding paragraph (b)(4)(i)(J);
■ aa. Revising paragraphs (b)(4)(ii)(A), (b)(4)(ii)(B), and (b)(4)(ii)(F);
■ bb. Removing the word ''and'' after the semicolon at the end of paragraph (b)(4)(ii)(L);
■ cc. Removing the period and adding in its place a semicolon and adding the word ''and'' at the end of paragraph (b)(4)(ii)(M);
■ dd. Adding paragraph (b)(4)(ii)(N);
■ ee. Adding the phrase ''(on and after January 1, 2009, component identification codes shall be reported in addition to the monitoring system identification code)'' after the second occurrence of the word ''system'' in paragraphs (b)(5)(i)(B), (b)(5)(ii)(B), and (b)(5)(iii)(B);
■ ff. Adding the phrase ''This requirement remains in effect through December 31, 2008'' after the word ''run;'', in paragraph (b)(5)(i)(H);
■ gg. Adding the phrase ''(as applicable). This requirement remains in effect through December 31, 2008'' after the word ''level'', in paragraph (b)(5)(iv)(A);
■ hh. Removing the word ''and'' after the semicolon at the end of paragraph (b)(5)(iv)(G);
■ ii. Removing the period and adding in its place a semicolon and adding the word ''and'' at the end of paragraph (b)(5)(iv)(H);
■ jj. Adding paragraph (b)(5)(iv)(I);
■ kk. Removing the word ''and'' after the semicolon at the end of paragraph (d)(1)(xi);
■ ll. Removing the period and adding in its place a semicolon and adding the word ''and'' at the end of paragraph (d)(1)(xii);
■ mm. Adding paragraph (d)(1)(xiii);
■ nn. Removing the phrase '', multiplied by 1.15, if appropriate'' from paragraph (d)(2)(iii);
■ oo. Removing the word ''and'' after the semicolon at the end of paragraph (d)(2)(iv);
■ pp. Removing the period and adding in its place a semicolon at the end of paragraph (d)(2)(v); and
■ qq. Adding paragraphs (d)(2)(vi), (d)(2)(vii), (e) and (f).

The revisions and additions read as follows:

§ 75.59 Certification, quality, assurance, and quality control record provisions.

* * * * *

(a) * * *

(1) * * *

(viii) For 7-day calibration error tests, a test number and reason for test;

* * * * *

(4) * * *

(vi) * * *

(N) Test number.

(vii) * * *

(M) An indicator (''flag'') if separate reference ratios are calculated for each multiple stack.

* * * * *

(6) For each SO_2, NO_X, Hg, or CO_2 pollutant concentration monitor, each component of a NO_X-diluent continuous emission monitoring system, and each CO_2 or O_2 monitor used to determine heat input, the owner or operator shall record the following information for the cycle time test:

* * * * *

(7) * * *

(viii) Data elements for Methods 30A and 30B. [Reserved]

(ix) For a unit with a flow monitor installed on a rectangular stack or duct, if a site-specific default or measured wall effects adjustment factor (WAF) is used to correct the stack gas volumetric flow rate data to account for velocity decay near the stack or duct wall, the owner or operator shall keep records of the following for each flow RATA performed with EPA Method 2 in appendices A–1 and A–2 to part 60 of this chapter, subsequent to the WAF determination:

(A) Monitoring system ID;

(B) Test number;

(C) Operating level;

(D) RATA end date and time;

(E) Number of Method 1 traverse points; and

(F) Wall effects adjustment factor (WAF), to the nearest 0.0001.

(x) For each RATA run using Method 29 in appendix A–8 to part 60 of this chapter to determine Hg concentration:

(A) Percent CO_2 and O_2 in the stack gas, dry basis;

(B) Moisture content of the stack gas (percent H_2O);

(C) Average stack gas temperature (°F);

(D) Dry gas volume metered (dscm);

(E) Percent isokinetic;

(F) Particulate Hg collected in the front half of the sampling train, corrected for the front-half blank value (μg); and

(G) Total vapor phase Hg collected in the back half of the sampling train, corrected for the back-half blank value (μg).

(8) For each certified continuous emission monitoring system, continuous opacity monitoring system, excepted monitoring system, or alternative monitoring system, the date and description of each event which requires certification, recertification, or certain diagnostic testing of the system and the date and type of each test performed. If the conditional data validation procedures of § 75.20(b)(3) are to be used to validate and report data prior to the completion of the required certification, recertification, or diagnostic testing, the date and hour of the probationary calibration error test shall be reported to mark the beginning of conditional data validation.

* * * * *

(b) * * *

(4) * * *

(i) * * *

(J) Test number.

(ii) * * *

(A) Completion date and hour of most recent primary element inspection or test number of the most recent primary element inspection (as applicable); (on and after January 1, 2009, the test number of the most recent primary element inspection is required in lieu of the completion date and hour for the most recent primary element inspection);

(B) Completion date and hour of most recent flow meter of transmitter accuracy test or test number of the most recent flowmeter or transmitter accuracy test (as applicable); (on and after January 1, 2009, the test number of the most recent flowmeter or transmitter accuracy test is required in lieu of the completion date and hour for the most recent flowmeter or transmitter accuracy test);

* * * * *

(F) Average load, in megawatts, 1000 lb/hr of steam, or mmBtu/hr thermal output;

* * * * *

(N) Monitoring system identification code.

* * * * *

(5) * * *

(iv) * * *

(I) Component identification code (required on and after January 1, 2009).

* * * * *

(d) * * *

(1) * * *

(xiii) An indicator (''flag'') if the run is used to calculate the highest 3-run average NO_X emission rate at any load level.

(2) * * *

(vi) Indicator of whether the testing was done at base load, peak load or both (if appropriate); and

(vii) The default NO_X emission rate for peak load hours (if applicable).

* * * * *

(e) *Excepted monitoring for Hg low mass emission units under § 75.81(b).* For qualifying coal-fired units using the alternative low mass emission methodology under § 75.81(b), the owner or operator shall record the data elements described in § 75.59(a)(7)(vii), § 75.59(a)(7)(viii), or § 75.59(a)(7)(x), as applicable, for each run of each Hg emission test and re-test required under § 75.81(c)(1) or § 75.81(d)(4)(iii).

(f) *DAHS Verification.* For each DAHS (missing data and formula) verification that is required for initial certification, recertification, or for certain diagnostic testing of a monitoring system, record the date and hour that the DAHS verification is successfully completed. (This requirement only applies to units that report monitoring plan data in accordance with § 75.53(g) and (h).)

* * * * *

■ 26. Section 75.60 is amended by adding paragraph (b)(8) to read as follows:

§ 75.60 General provisions.

* * * * *

(b) * * *

(8) *Routine retest reports for Hg low mass emissions units.* If requested in writing (or by electronic mail) by the applicable EPA Regional Office, appropriate State, and/or appropriate local air pollution control agency, the designated representative shall submit a hardcopy report for a semiannual or annual retest required under § 75.81(d)(4)(iii) for a Hg low mass emissions unit, within 45 days after completing the test or within 15 days of receiving the request, whichever is later. The designated representative shall report, at a minimum, the following hardcopy information to the applicable EPA Regional Office, appropriate State, and/or appropriate local air pollution control agency that requested the hardcopy report: a summary of the test results; the raw reference method data for each test run; the raw data and results of all pretest, post-test, and post-run quality-assurance checks of the reference method; the raw data and results of moisture measurements made during the test runs (if applicable); diagrams illustrating the test and sample point locations; a copy of the test protocol used; calibration certificates for the gas standards or standard solutions used in the testing; laboratory calibrations of the source sampling equipment; and the names of the key personnel involved in the test program, including test team members, plant contact persons, agency representatives and test observers.

* * * * *

■ 27. Section 75.61 is amended by:

■ a. Revising the first sentence of paragraph (a)(1) introductory text;

■ b. Revising paragraph (a)(3);

■ c. Revising the first sentence of paragraph (a)(5) introductory text; and

■ d. Adding paragraphs (a)(7) and (a)(8)

The revisions and additions read as follows:

§ 75.61 Notifications.

(a) * * *

(1) * * * The owner or operator or designated representative for an affected unit shall submit written notification of initial certification tests and revised test dates as specified in § 75.20 for continuous emission monitoring systems, for the excepted Hg monitoring methodology under § 75.81(b), for alternative monitoring systems under subpart E of this part, or for excepted monitoring systems under appendix E to this part, except as provided in paragraphs (a)(1)(iii), (a)(1)(iv) and (a)(4) of this section. * * *

* * * * *

(3) *Unit shutdown and recommencement of commercial operation.* For an affected unit that will be shut down on the relevant compliance date specified in § 75.4 or in a State or Federal pollutant mass emissions reduction program that adopts the monitoring and reporting requirements of this part, if the owner or operator is relying on the provisions in § 75.4(d) to postpone certification testing, the designated representative for the unit shall submit notification of unit shutdown and recommencement of commercial operation as follows:

(i) For planned unit shutdowns (e.g., extended maintenance outages), written notification of the planned shutdown date shall be provided at least 21 days prior to the applicable compliance date, and written notification of the planned date of recommencement of commercial operation shall be provided at least 21 days in advance of unit restart. If the actual shutdown date or the actual date of recommencement of commercial operation differs from the planned date, written notice of the actual date shall be submitted no later than 7 days following the actual date of shutdown or of recommencement of commercial operation, as applicable;

(ii) For unplanned unit shutdowns (e.g., forced outages), written notification of the actual shutdown date shall be provided no more than 7 days after the shutdown, and written notification of the planned date of recommencement of commercial operation shall be provided at least 21 days in advance of unit restart. If the actual date of recommencement of commercial operation differs from the expected date, written notice of the actual date shall be submitted no later than 7 days following the actual date of recommencement of commercial operation.

* * * * *

(5) * * * The owner or operator or designated representative of an affected unit shall submit written notice of the date of periodic relative accuracy testing performed under section 2.3.1 of appendix B to this part, of periodic retesting performed under section 2.2 of appendix E to this part, of periodic retesting of low mass emissions units performed under § 75.19(c)(1)(iv)(D), and of periodic retesting of Hg low mass emissions units performed under § 75.81(d)(4)(iii), no later than 21 days prior to the first scheduled day of testing. * * *

(7) *Long-term cold storage and recommencement of commercial operation.* The designated representative for an affected unit that is placed into long-term cold storage that is relying on the provisions in § 75.4(d) or § 75.64(a), either to postpone certification testing or to discontinue the submittal of quarterly reports during the period of long-term cold storage, shall provide written notification of long-term cold storage status and recommencement of commercial operation as follows:

(i) Whenever an affected unit has been placed into long-term cold storage, written notification of the date and hour that the unit was shutdown and a statement from the designated representative stating that the shutdown is expected to last for at least two years from that date, in accordance with the definition for long-term cold storage of a unit as provided in § 72.2 of this chapter.

(ii) Whenever an affected unit that has been placed into long-term cold storage is expected to resume operation, written notification shall be submitted 45 calendar days prior to the planned date of recommencement of commercial operation. If the actual date of

recommencement of commercial operation differs from the expected date, written notice of the actual date shall be submitted no later than 7 days following the actual date of recommencement of commercial operation.

(8) *Certification deadline date for new or newly affected units.* The designated representative of a new or newly affected unit shall provide notification of the date on which the relevant deadline for initial certification is reached, either as provided in § 75.4(b) or § 75.4(c), or as specified in a State or Federal SO_2, NO_X, or Hg mass emission reduction program that incorporates by reference, or otherwise adopts, the monitoring, recordkeeping, and reporting requirements of subpart F, G, H, or I of this part. The notification shall be submitted no later than 7 calendar days after the applicable certification deadline is reached.

* * * * *

■ 28. Section 75.62 is amended by:
■ a. Revising paragraph (a)(1); and
■ b. Removing the number ''45'' and adding in its place the number ''21'' before the phrase ''days prior'', in paragraph (a)(2).

The revisions read as follows:

§ 75.62 Monitoring plan submittals.

(a) * * *

(1) *Electronic.* Using the format specified in paragraph (c) of this section, the designated representative for an affected unit shall submit a complete, electronic, up-to-date monitoring plan file (except for hardcopy portions identified in paragraph (a)(2) of this section) to the Administrator as follows: no later than 21 days prior to the initial certification tests; at the time of each certification or recertification application submission; and (prior to or concurrent with) the submittal of the electronic quarterly report for a reporting quarter where an update of the electronic monitoring plan information is required, either under § 75.53(b) or elsewhere in this part.

* * * * *

■ 29. Section 75.63 is amended by:
■ a. Removing the phrase ''and a hardcopy certification application form (EPA form 7610–14)'' from paragraph (a)(1)(i)(A);
■ b. Revising paragraph (a)(1)(ii)(A);
■ c. Adding the phrase ''or § 75.53(h)(4)(ii) (as applicable)'' after the identifier ''§ 75.53(f)(5)(ii)'', in paragraph (a)(1)(ii)(B);
■ d. Removing the phrase ''and a hardcopy certification application form (EPA form 7610–14)'' after the word ''section'', in paragraph (a)(2)(i);
■ e. Revising paragraph (a)(2)(iii);
■ f. Removing and reserving paragraph (b)(2)(iii);
■ g. Revising paragraph (b)(2)(iv).

The revisions read as follows:

§ 75.63 Initial certification or recertification application.

(a) * * *

(1) * * *

(ii) * * *

(A) To the Administrator, the electronic low mass emission qualification information required by § 75.53(f)(5)(i) or § 75.53(h)(4)(i) (as applicable) and paragraph (b)(1)(i) of this section; and

* * * * *

(2) * * *

(iii) Notwithstanding the requirements of paragraphs (a)(2)(i) and (a)(2)(ii) of this section, for an event for which the Administrator determines that only diagnostic tests (*see* § 75.20(b)) are required rather than recertification testing, no hardcopy submittal is required; however, the results of all diagnostic test(s) shall be submitted prior to or concurrent with the electronic quarterly report required under § 75.64. Notwithstanding the requirement of § 75.59(e), for DAHS (missing data and formula) verifications, no hardcopy submittal is required; the owner or operator shall keep these test results on-site in a format suitable for inspection.

* * * * *

(b) * * *

(2) * * *

(iv) Designated representative signature certifying the accuracy of the submission.

* * * * *

■ 30. Section 75.64 is amended by:
■ a. Revising paragraph (a) introductory text;
■ b. Redesignate paragraph (a)(2)(xiv) as paragraph (a)(2)(xiii);
■ c. Revise newly designated paragraph (a)(2)(xiii);
■ d. Removing paragraph (a)(8);
■ e. Redesignating paragraphs (a)(9) through (a)(11) as paragraphs (a)(13) through (a)(15), and redesignating paragraphs (a)(3) through (a)(7) as paragraphs (a)(8) through (a)(12);
■ f. Adding new paragraphs (a)(3) through (a)(7); and
■ g. Removing the citation ''§ 75.59'', and adding in its place ''§ 75.58(f)(2)'' at the end of newly designated paragraph (a)(14).

The revisions and additions read as follows:

§ 75.64 Quarterly reports.

(a) *Electronic submission.* The designated representative for an affected unit shall electronically report the data and information in paragraphs (a), (b), and (c) of this section to the Administrator quarterly, beginning with the data from the earlier of the calendar quarter corresponding to the date of provisional certification or the calendar quarter corresponding to the relevant deadline for initial certification in § 75.4(a), (b), or (c). The initial quarterly report shall contain hourly data beginning with the hour of provisional certification or the hour corresponding to the relevant certification deadline, whichever is earlier. For an affected unit subject to § 75.4(d) that is shutdown on the relevant compliance date in § 75.4(a) or has been placed in long-term cold storage (as defined in § 72.2 of this chapter), quarterly reports are not required. In such cases, the owner or operator shall submit quarterly reports for the unit beginning with the data from the quarter in which the unit recommences commercial operation (where the initial quarterly report contains hourly data beginning with the first hour of recommenced commercial operation of the unit). For units placed into long-term cold storage during a reporting quarter, the exemption from submitting quarterly reports begins with the calendar quarter following the date that the unit is placed into long-term cold storage. For any provisionally-certified monitoring system, § 75.20(a)(3) shall apply for initial certifications, and § 75.20(b)(5) shall apply for recertifications. Each electronic report must be submitted to the Administrator within 30 days following the end of each calendar quarter. Prior to January 1, 2008, each electronic report shall include for each affected unit (or group of units using a common stack), the information provided in paragraphs (a)(1), (a)(2), and (a)(8) through (a)(15) of this section. During the time period of January 1, 2008 to January 1, 2009, each electronic report shall include, either the information provided in paragraphs (a)(1), (a)(2), and (a)(8) through (a)(15) of this section or the information provided in paragraphs (a)(3) through (a)(15) of this section. On and after January 1, 2009, the owner or operator shall meet the requirements of paragraphs (a)(3) through (a)(15) of this section only. Each electronic report shall also include the date of report generation.

* * * * *

(2) * * *

(xiii) Supplementary RATA information required under § 75.59(a)(7), except that:

(A) The applicable data elements under § 75.59(a)(7)(ii)(A) through (T)

and under § 75.59(a)(7)(iii)(A) through (M) shall be reported for flow RATAs at circular or rectangular stacks (or ducts) in which angular compensation for yaw and/or pitch angles is used (i.e., Method 2F or 2G in appendices A–1 and A–2 to part 60 of this chapter), with or without wall effects adjustments;

(B) The applicable data elements under § 75.59(a)(7)(ii)(A) through (T) and under § 75.59(a)(7)(iii)(A) through (M) shall be reported for any flow RATA run at a circular stack in which Method 2 in appendices A–1 and A–2 to part 60 of this chapter is used and a wall effects adjustment factor is determined by direct measurement;

(C) The data under § 75.59(a)(7)(ii)(T) shall be reported for all flow RATAs at circular stacks in which Method 2 in appendices A–1 and A–2 to part 60 of this chapter is used and a default wall effects adjustment factor is applied; and

(D) The data under § 75.59(a)(7)(ix)(A) through (F) shall be reported for all flow RATAs at rectangular stacks or ducts in which Method 2 in appendices A–1 and A–2 to part 60 of this chapter is used and a wall effects adjustment factor is applied.

(3) Facility identification information, including:

(i) Facility/ORISPL number;

(ii) Calendar quarter and year for the data contained in the report; and

(iii) Version of the electronic data reporting format used for the report.

(4) In accordance with § 75.62(a)(1), if any monitoring plan information required in § 75.53 requires an update, either under § 75.53(b) or elsewhere in this part, submission of the electronic monitoring plan update shall be completed prior to or concurrent with the submittal of the quarterly electronic data report for the appropriate quarter in which the update is required.

(5) Except for the daily calibration error test data, daily interference check, and off-line calibration demonstration information required in § 75.59(a)(1) and (2), which must always be submitted with the quarterly report, the certification, quality assurance, and quality control information required in § 75.59 shall either be submitted prior to or concurrent with the submittal of the relevant quarterly electronic data report.

(6) The information and hourly data required in §§ 75.57 through 75.59, and daily calibration error test data, daily interference check, and off-line calibration demonstration information required in § 75.59(a)(1) and (2).

(7) Notwithstanding the requirements of paragraphs (a)(4) through (a)(6) of this section, the following information is excluded from electronic reporting:

(i) Descriptions of adjustments, corrective action, and maintenance;

(ii) Information which is incompatible with electronic reporting (e.g., field data sheets, lab analyses, quality control plan);

(iii) Opacity data listed in § 75.57(f), and in § 75.59(a)(8);

(iv) For units with SO_2 or NO_X add-on emission controls that do not elect to use the approved site-specific parametric monitoring procedures for calculation of substitute data, the information in § 75.58(b)(3);

(v) Information required by § 75.57(h) concerning the causes of any missing data periods and the actions taken to cure such causes;

(vi) Hardcopy monitoring plan information required by § 75.53 and hardcopy test data and results required by § 75.59;

(vii) Records of flow monitor and moisture monitoring system polynomial equations, coefficients, or ''K'' factors required by § 75.59(a)(5)(vi) or § 75.59(a)(5)(vii);

(viii) Daily fuel sampling information required by § 75.58(c)(3)(i) for units using assumed values under appendix D of this part;

(ix) Information required by §§ 75.59(b)(1)(vi), (vii), (viii), (ix), and (xiii), and (b)(2)(iii) and (iv) concerning fuel flowmeter accuracy tests and transmitter/transducer accuracy tests;

(x) Stratification test results required as part of the RATA supplementary records under § 75.59(a)(7);

(xi) Data and results of RATAs that are aborted or invalidated due to problems with the reference method or operational problems with the unit and data and results of linearity checks that are aborted or invalidated due to problems unrelated to monitor performance; and

(xii) Supplementary RATA information required under § 75.59(a)(7)(i) through § 75.59(a)(7)(v), except that:

(A) The applicable data elements under § 75.59(a)(7)(ii)(A) through (T) and under § 75.59(a)(7)(iii)(A) through (M) shall be reported for flow RATAs at circular or rectangular stacks (or ducts) in which angular compensation for yaw and/or pitch angles is used (i.e., Method 2F or 2G in appendices A–1 and A–2 to part 60 of this chapter), with or without wall effects adjustments;

(B) The applicable data elements under § 75.59(a)(7)(ii)(A) through (T) and under § 75.59(a)(7)(iii)(A) through (M) shall be reported for any flow RATA run at a circular stack in which Method 2 in appendices A–1 and A–2 to part 60 of this chapter is used and a wall effects adjustment factor is determined by direct measurement;

(C) The data under § 75.59(a)(7)(ii)(T) shall be reported for all flow RATAs at circular stacks in which Method 2 in appendices A–1 and A–2 to part 60 of this chapter is used and a default wall effects adjustment factor is applied; and

(D) The data under § 75.59(a)(7)(vii)(A) through (F) shall be reported for all flow RATAs at rectangular stacks or ducts in which Method 2 in appendices A–1 and A–2 to part 60 of this chapter is used and a wall effects adjustment factor is applied.

* * * * *

§ 75.66 [Amended]

■ 31. Section 75.66 is amended by removing and reserving paragraph (f).

■ 32. Section 75.71 is amended by:

■ a. Revising the section heading;

■ b. In paragraph (a)(1), by removing the second occurrence of the phrase ''CO_2 diluent gas monitor'' and adding in its place the phrase ''CO_2 diluent gas monitoring system'';

■ c. Removing the phrase ''O_2 or CO_2 diluent gas monitor'' and adding in its place the phrase ''O_2 or CO_2 monitoring system'', in paragraph (a)(2); and

■ d. Revising paragraph (e).

The revision reads as follows:

§ 75.71 Specific provisions for monitoring NO_X and heat input for the purpose of calculating NO_X mass emissions.

* * * * *

(e) *Low mass emissions units.* Notwithstanding the requirements of paragraphs (c) and (d) of this section, for an affected unit using the low mass emissions (LME) unit under § 75.19 to estimate hourly NO_X emission rate, heat input and NO_X mass emissions, the owner or operator shall calculate the ozone season NO_X mass emissions by summing all of the estimated hourly NO_X mass emissions in the ozone season, as determined under § 75.19 (c)(4)(ii)(A), and dividing this sum by 2000 lb/ton.

* * * * *

■ 33. Section 75.72 is amended by:

■ a. Revising the section heading and the introductory text;

■ b. Revising paragraph (c)(3); and

■ c. Removing and reserving paragraph (f).

The revisions read as follows:

§ 75.72 Determination of NO_X mass emissions for common stack and multiple stack configurations.

The owner or operator of an affected unit shall either: calculate hourly NO_X mass emissions (in lbs) by multiplying the hourly NO_X emission rate (in lbs/

mmBtu) by the hourly heat input rate (in mmBtu/hr) and the unit or stack operating time (as defined in § 72.2), or, as provided in paragraph (e) of this section, calculate hourly NO_X mass emissions from the hourly NO_X concentration (in ppm) and the hourly stack flow rate (in scfh). Only one methodology for determining NO_X mass emissions shall be identified in the monitoring plan for each monitoring location at any given time. The owner or operator shall also calculate quarterly and cumulative year-to-date NO_X mass emissions and cumulative NO_X mass emissions for the ozone season (in tons) by summing the hourly NO_X mass emissions according to the procedures in section 8 of appendix F to this part.

* * * * *

(c) * * *

(3) Install, certify, operate, and maintain a NO_X-diluent CEMS and a flow monitoring system only on the main stack. If this option is chosen, it is not necessary to designate the exhaust configuration as a multiple stack configuration in the monitoring plan required under § 75.53, since only the main stack is monitored. For each unit operating hour in which the bypass stack is used and the emissions are either uncontrolled (or the add-on controls are not documented to be operating properly), report NO_X mass emissions as follows. If the unit heat input is determined using a flow monitor and a diluent monitor, report NO_X mass emissions using the maximum potential NO_X emission rate, the maximum potential flow rate, and either the maximum potential CO_2 concentration or the minimum potential O_2 concentration (as applicable). The maximum potential NO_X emission rate may be specific to the type of fuel combusted in the unit during the bypass (see § 75.33(c)(8)). If the unit heat input is determined using a fuel flowmeter, in accordance with appendix D to this part, report NO_X mass emissions as the product of the maximum potential NO_X emission rate and the actual measured hourly heat input rate. Alternatively, for a unit with NO_X add-on emission controls, for each unit operating hour in which the bypass stack is used but the add-on NO_X emission controls are not bypassed, the owner or operator may report the maximum controlled NO_X emission rate (MCR) instead of the maximum potential NO_X emission rate provided that the add-on controls are documented to be operating properly, as described in the quality assurance/quality control program for the unit, required by section 1 in appendix B of this part. To provide the necessary documentation, the owner or operator shall record parametric data to verify the proper operation of the NO_X add-on emission controls as described in § 75.34(d). Furthermore, the owner or operator shall calculate the MCR using the procedure described in section 2.1.2.1(b) of appendix A to this part by replacing the words ''maximum potential NO_X emission rate (MER)'' with the words ''maximum controlled NO_X emission rate (MCR)'' and by using the NO_X MEC in the calculations instead of the NO_X MPC.

* * * * *

(f) [Reserved]

* * * * *

■ 34. Section 75.73 is amended by:

■ a. Revising paragraph (c)(3);

■ b. Removing the number ''45'' and adding in its place the number ''21'' in paragraphs (e)(1) and (e)(2);

■ c. Revising paragraph (f)(1) introductory text;

■ d. Removing the phrase ''paragraph (a)'' and adding in its place the phrase ''paragraphs (a) and (b)'' in paragraph (f)(1)(ii) introductory text; and

■ e. Revising paragraph (f)(1)(ii)(K).

The revisions read as follows:

§ 75.73 Recordkeeping and reporting.

* * * * *

(c) * * *

(3) *Contents of the monitoring plan for units not subject to an Acid Rain emissions limitation.* Prior to January 1, 2009, each monitoring plan shall contain the information in § 75.53(e)(1) or § 75.53(g)(1) in electronic format and the information in § 75.53(e)(2) or § 75.53(g)(2) in hardcopy format. On and after January 1, 2009, each monitoring plan shall contain the information in § 75.53(g)(1) in electronic format and the information in § 75.53(g)(2) in hardcopy format, only. In addition, to the extent applicable, prior to January 1, 2009, each monitoring plan shall contain the information in § 75.53(f)(1)(i), (f)(2)(i), and (f)(4) or § 75.53(h)(1)(i), and (h)(2)(i) in electronic format and the information in § 75.53(f)(1)(ii) and (f)(2)(ii) or § 75.53(h)(1)(ii) and (h)(2)(ii) in hardcopy format. On and after January 1, 2009, each monitoring plan shall contain the information in § 75.53(h)(1)(i), and (h)(2)(i) in electronic format and the information in § 75.53(h)(1)(ii) and (h)(2)(ii) in hardcopy format, only. For units using the low mass emissions excepted methodology under § 75.19, prior to January 1, 2009, the monitoring plan shall include the additional information in § 75.53(f)(5)(i) and (f)(5)(ii) or § 75.53(h)(4)(i) and (h)(4)(ii). On and after January 1, 2009, for units using the low mass emissions excepted methodology under § 75.19 the monitoring plan shall include the additional information in § 75.53(h)(4)(i) and (h)(4)(ii), only. Prior to January 1, 2008, the monitoring plan shall also identify, in electronic format, the reporting schedule for the affected unit (ozone season or quarterly), and the beginning and end dates for the reporting schedule. The monitoring plan also shall include a seasonal controls indicator, and an ozone season fuel-switching flag.

* * * * *

(f) * * *

(1) *Electronic submission.* The designated representative for an affected unit shall electronically report the data and information in this paragraph (f)(1) and in paragraphs (f)(2) and (3) of this section to the Administrator quarterly, unless the unit has been placed in long-term cold storage (as defined in § 72.2 of this chapter). For units placed into long-term cold storage during a reporting quarter, the exemption from submitting quarterly reports begins with the calendar quarter following the date that the unit is placed into long-term cold storage. In such cases, the owner or operator shall submit quarterly reports for the unit beginning with the data from the quarter in which the unit recommences operation (where the initial quarterly report contains hourly data beginning with the first hour of recommenced operation of the unit). Each electronic report must be submitted to the Administrator within 30 days following the end of each calendar quarter. Except as otherwise provided in § 75.64(a)(4) and (a)(5), each electronic report shall include the information provided in paragraphs (f)(1)(i) through (1)(vi) of this section, and shall also include the date of report generation. Prior to January 1, 2009, each report shall include the facility information provided in paragraphs (f)(1)(i)(A) and (B) of this section, for each affected unit or group of units monitored at a common stack. On and after January 1, 2009, only the facility identification information provided in paragraph (f)(1)(i)(A) of this section is required.

* * * * *

(ii) * * *

(K) Supplementary RATA information required under § 75.59(a)(7), except that:

(*1*) The applicable data elements under § 75.59(a)(7)(ii)(A) through (T) and under § 75.59(a)(7)(iii)(A) through (M) shall be reported for flow RATAs at circular or rectangular stacks (or ducts) in which angular compensation for yaw and/or pitch angles is used (i.e., Method

2F or 2G in appendices A–1 and A–2 to part 60 of this chapter), with or without wall effects adjustments;

(*2*) The applicable data elements under § 75.59(a)(7)(ii)(A) through (T) and under § 75.59(a)(7)(iii)(A) through (M) shall be reported for any flow RATA run at a circular stack in which Method 2 in appendices A–1 and A–2 to part 60 of this chapter is used and a wall effects adjustment factor is determined by direct measurement;

(*3*) The data under § 75.59(a)(7)(ii)(T) shall be reported for all flow RATAs at circular stacks in which Method 2 in appendices A–1 and A–2 to part 60 of this chapter is used and a default wall effects adjustment factor is applied; and

(*4*) The data under § 75.59(a)(7)(ix)(A) through (F) shall be reported for all flow RATAs at rectangular stacks or ducts in which Method 2 in appendices A–1 and A–2 to part 60 of this chapter is used and a wall effects adjustment factor is applied.

* * * * *

■ 35. Section 75.74 is amended by:

■ a. Removing the phrase ''In the time period prior to the start of the current ozone season (i.e., in the period extending from October 1 of the previous calendar year through April 30 of the current calendar year), the'', and adding in its place the word ''The'', in paragraph (c)(2) introductory text;

■ b. Adding the words ''in the second calendar quarter no later than April 30'' to the end of paragraph (c)(2)(i) introductory text;

■ c. Removing the phrase ''of the current calendar year'' from the first sentence, and removing the last sentence of paragraph (c)(2)(i)(C);

■ d. Revising paragraph (c)(2)(i)(D);

■ e. Adding the words ''in the first or second calendar quarter, but no later than April 30'' to the end of the first sentence, and by removing the second sentence of paragraph (c)(2)(ii) introductory text;

■ f. Removing the words ''of the current calendar year'' from paragraph (c)(2)(ii)(E);

■ g. Revising paragraph (c)(2)(ii)(F);

■ h. Removing paragraphs (c)(2)(ii)(G) and (c)(2)(ii)(H);

■ i. Revising paragraph (c)(3)(ii);

■ j. Removing and reserving paragraphs (c)(3)(vi) through (viii);

■ k. Removing all occurrences of the words ''§ 75.31, § 75.33, or § 75.37'' and adding in their place the words ''§§ 75.31 through 75.37'' in paragraphs (c)(3)(xi), (c)(3)(xii)(A), and (c)(3)(xii)(B);

■ l. Revising paragraph (c)(6)(iii);

■ m. Removing the words ''October 1 of the previous calendar year'' and adding in its place the words ''January 1'' in paragraph (c)(6)(v);

■ n. Revising paragraph (c)(7)(iii)(L);

■ o. Revising paragraph (c)(8)(ii); and

■ p. Revising paragraph (c)(11).

The revisions read as follows:

§ 75.74 Annual and ozone season monitoring and reporting requirements.

* * * * *

(c) * * *

(2) * * *

(i) * * *

(D) If the linearity check is not completed by April 30, data validation shall be determined in accordance with paragraph (c)(3)(ii)(E) of this section.

(ii) * * *

(F) *Data Validation.* For each RATA that is performed by April 30, data validation shall be done according to sections 2.3.2(a)–(j) of appendix B to this part. However, if a required RATA is not completed by April 30, data from the monitoring system shall be invalid, beginning with the first unit operating hour on or after May 1. The owner or operator shall continue to invalidate all data from the CEMS until either:

(*1*) The required RATA of the CEMS has been performed and passed; or

(*2*) A probationary calibration error test of the CEMS is passed in accordance with § 75.20(b)(3)(ii). Once the probationary calibration error test has been passed, the owner or operator shall perform the required RATA in accordance with the conditional data validation provisions and within the 720 unit or stack operating hour time frame specified in § 75.20(b)(3) (subject to the restrictions in paragraph (c)(3)(xii) of this section), and the term ''quality assurance'' shall apply instead of the term ''recertification.'' However, in lieu of the provisions in § 75.20(b)(3)(ix), the owner or operator shall follow the applicable provisions in paragraphs (c)(3)(xi) and (c)(3)(xii) of this section.

(3) * * *

(ii) For each gas monitor required by this subpart, linearity checks shall be performed in the second and third calendar quarters, as follows:

(A) For the second calendar quarter, the pre-ozone season linearity check required under paragraph (c)(2)(i) of this section shall be performed by April 30.

(B) For the third calendar quarter, a linearity check shall be performed and passed no later than July 30.

(C) Conduct each linearity check in accordance with the general procedures in section 6.2 of appendix A to this part, except that the data validation procedures in sections 6.2(a) through (f) of appendix A do not apply.

(D) Each linearity check shall be done ''hands-off,'' as described in section 2.2.3(c) of appendix B to this part.

(E) *Data Validation.* For second and third quarter linearity checks performed by the applicable deadline (i.e., April 30 or July 30), data validation shall be done in accordance with sections 2.2.3(a), (b), (c), (e), and (h) of Appendix B to this part. However, if a required linearity check for the second calendar quarter is not completed by April 30, or if a required linearity check for the third calendar quarter is not completed by July 30, data from the monitoring system (or range) shall be invalid, beginning with the first unit operating hour on or after May 1 or July 31, respectively. The owner or operator shall continue to invalidate all data from the CEMS until either:

(*1*) The required linearity check of the CEMS has been performed and passed; or

(*2*) A probationary calibration error test of the CEMS is passed in accordance with § 75.20(b)(3)(ii). Once the probationary calibration error test has been passed, the owner or operator shall perform the required linearity check in accordance with the conditional data validation provisions and within the 168 unit or stack operating hour time frame specified in § 75.20(b)(3) (subject to the restrictions in paragraph (c)(3)(xii) of this section), and the term ''quality assurance'' shall apply instead of the term ''recertification.'' However, in lieu of the provisions in § 75.20(b)(3)(ix), the owner or operator shall follow the applicable provisions in paragraphs (c)(3)(xi) and (c)(3)(xii) of this section.

(F) A pre-season linearity check performed and passed in April satisfies the linearity check requirement for the second quarter.

(G) The third quarter linearity check requirement in paragraph (c)(3)(ii)(B) of this section is waived if:

(*1*) Due to infrequent unit operation, the 168 operating hour conditional data validation period associated with a pre-season linearity check extends into the third quarter; and

(*2*) A linearity check is performed and passed within that conditional data validation period.

* * * * *

(6) * * *

(iii) For the time periods described in paragraphs (c)(2)(i)(C) and (c)(2)(ii)(E) of this section, hourly emission data and the results of all daily calibration error tests and flow monitor interference checks shall be recorded. The owner or operator may opt to report unit operating data, daily calibration error test and flow monitor interference check results, and hourly emission data in the time period from April 1 through April

30. However, only the data recorded in the time period from May 1 through September 30 shall be used for NO_X mass compliance determination;

* * * * *

(7) * * *

(iii) * * *

(L) In § 75.34(a)(3) and (a)(5), the phrases ''720 quality-assured monitor operating hours within the ozone season'' and ''2160 quality-assured monitor operating hours within the ozone season'' apply instead of ''720 quality-assured monitor operating hours'' and ''2160 quality-assured monitor operating hours'', respectively.

(8) * * *

(ii) For units with add-on emission controls, using the missing data options in §§ 75.34(a)(1) through 75.34(a)(5), the range of operating parameters for add-on emission controls (as defined in the quality assurance/quality control program for the unit required by section 1 in appendix B to this part) and information for verifying proper operation of the add-on emission controls during missing data periods, as described in § 75.34(d).

* * * * *

(11) Units may qualify to use the optional NO_X mass emissions estimation protocol for gas-fired and oil-fired peaking units in appendix E to this part on an ozone season basis. In order to be allowed to use this methodology, the unit must meet the definition of ''peaking unit'' in § 72.2 of this chapter, except that the words ''year'', ''calendar year'' and ''calendar years'' in that definition shall be replaced by the words ''ozone season'', ''ozone season'', and ''ozone seasons'', respectively. In addition, in the definition of the term ''capacity factor'' in § 72.2 of this chapter, the word ''annual'' shall be replaced by the words ''ozone season'' and the number ''8,760'' shall be replaced by the number ''3,672''.

§ 75.80 [Amended]

■ 36. Section 75.80(f)(1)(iii) is amended by removing the words ''or § 75.12(b),''.

■ 37. Section 75.81 is amended by:

■ a. Removing the words ''or § 75.12(b)'' and ''or § 75.12,'' from paragraph (a)(3);

■ b. Revising paragraph (a)(4);

■ c. Revising paragraph (c)(1);

■ d. Revising paragraph (c)(2);

■ e. Removing Eq. 1 from paragraph (d)(1);

■ f. Revising paragraph (d)(2);

■ g. Adding paragraph (d)(4)(iv); and

■ h. Revising paragraphs (d)(5) and (e)(1).

The revisions and additions read as follows:

§ 75.81 Monitoring of Hg mass emissions and heat input at the unit level.

* * * * *

(a) * * *

(4) If heat input is required to be reported under the applicable State or Federal Hg mass emission reduction program that adopts the requirements of this subpart, the owner or operator must meet the general operating requirements for a flow monitoring system and an O_2 or CO_2 monitoring system to measure heat input rate.

* * * * *

(c) * * *

(1) The owner or operator must perform Hg emission testing one year or less before the compliance date in § 75.80(b), to determine the Hg concentration (i.e., total vapor phase Hg) in the effluent.

(i) The testing shall be performed using one of the Hg reference methods listed in § 75.22(a)(7), and shall consist of a minimum of 3 runs at the normal unit operating load, while combusting coal. The coal combusted during the testing shall be representative of the coal that will be combusted at the start of the Hg mass emissions reduction program (preferably from the same source(s) of supply).

(ii) The minimum time per run shall be 1 hour if Method 30A is used. If either Method 29 in appendix A–8 to part 60 of this chapter, ASTM D6784–02 (the Ontario Hydro method) (incorporated by reference under § 75.6 of this part), or Method 30B is used, paired samples are required for each test run and the runs must be long enough to ensure that sufficient Hg is collected to analyze. When Method 29 in appendix A–8 to part 60 of this chapter or the Ontario Hydro method is used, the test results shall be based on the vapor phase Hg collected in the back-half of the sampling trains (i.e., the non-filterable impinger catches). For each Method 29 in appendix A–8 to part 60 of this chapter, Method 30B, or Ontario Hydro method test run, the paired trains must meet the relative deviation (RD) requirement specified in § 75.22(a)(7) or Method 30B, as applicable. If the RD specification is met, the results of the two samples shall be averaged arithmetically.

(iii) If the unit is equipped with flue gas desulfurization or add-on Hg emission controls, the controls must be operating normally during the testing, and, for the purpose of establishing proper operation of the controls, the owner or operator shall record parametric data or SO_2 concentration data in accordance with § 75.58(b)(3)(i).

(iv) If two or more of units of the same type qualify as a group of identical units in accordance with § 75.19(c)(1)(iv)(B), the owner or operator may test a subset of these units in lieu of testing each unit individually. If this option is selected, the number of units required to be tested shall be determined from Table LM–4 in § 75.19. For the purposes of the required retests under paragraph (d)(4) of this section, EPA strongly recommends that (to the extent practicable) the same subset of the units not be tested in two successive retests, and that every effort be made to ensure that each unit in the group of identical units is tested in a timely manner.

(2)(i) Based on the results of the emission testing, Equation 1 of this section shall be used to provide a conservative estimate of the annual Hg mass emissions from the unit:

$$E = N\ K\ C_{Hg}\ Q_{max} \qquad \text{(Eq. 1)}$$

Where:

E = Estimated annual Hg mass emissions from the affected unit, (ounces/year)

K = Units conversion constant, 9.978×10^{-10} oz-scm/μg-scf

N = Either 8,760 (the number of hours in a year) or the maximum number of operating hours per year (if less than 8,760) allowed by the unit's Federally-enforceable operating permit.

C_{Hg} = The highest Hg concentration (μg/scm) from any of the test runs or 0.50 μg/scm, whichever is greater

Q_{max} = Maximum potential flow rate, determined according to section 2.1.4.1 of appendix A to this part, (scfh)

(ii) Equation 1 of this section assumes that the unit operates at its maximum potential flow rate, either year-round or for the maximum number of hours allowed by the operating permit (if unit operation is restricted to less than 8,760 hours per year). If the permit restricts the annual unit heat input but not the number of annual unit operating hours, the owner or operator may divide the allowable annual heat input (mmBtu) by the design rated heat input capacity of the unit (mmBtu/hr) to determine the value of ''N'' in Equation 1. Also, note that if the highest Hg concentration

measured in any test run is less than 0.50 μg/scm, a default value of 0.50 μg/scm must be used in the calculations.

* * * * *

(d) * * *

(2) Following initial certification, the same default Hg concentration value that was used to estimate the unit's annual Hg mass emissions under paragraph (c) of this section shall be reported for each unit operating hour, except as otherwise provided in paragraph (d)(4)(iv) or (d)(6) of this section. The default Hg concentration value shall be updated as appropriate, according to paragraph (d)(5) of this section.

* * * * *

(4) * * *

(iv) An additional retest is required when there is a change in the coal rank of the primary fuel (e.g., when the primary fuel is switched from bituminous coal to lignite). Use ASTM D388–99 (incorporated by reference under § 75.6 of this part) to determine the coal rank. The four principal coal ranks are anthracitic, bituminous, subbituminous, and lignitic. The ranks of anthracite coal refuse (culm) and bituminous coal refuse (gob) shall be anthracitic and bituminous, respectively. The retest shall be performed within 720 unit operating hours of the change.

(5) The default Hg concentration used for reporting under § 75.84 shall be updated after each required retest. This includes retests that are required prior to the compliance date in § 75.80(b). The updated value shall either be the highest Hg concentration measured in any of the test runs or 0.50 μg/scm, whichever is greater. The updated value shall be applied beginning with the first unit operating hour in which Hg emissions data are required to be reported after completion of the retest, except as provided in paragraph (d)(4)(iv) of this section, where the need to retest is triggered by a change in the coal rank of the primary fuel. In that case, apply the updated default Hg concentration beginning with the first unit operating hour in which Hg emissions are required to be reported after the date and hour of the fuel switch.

* * * * *

(e) * * *

(1) The methodology may not be used for reporting Hg mass emissions at a common stack unless all of the units using the common stack are affected units and the units' combined potential to emit does not exceed 464 ounces of Hg per year times the number of units sharing the stack, in accordance with paragraphs (c) and (d) of this section. If the test results demonstrate that the units sharing the common stack qualify as low mass emitters, the default Hg concentration used for reporting Hg mass emissions at the common stack shall either be the highest value obtained in any test run or 0.50 μg/scm, whichever is greater.

(i) The initial emission testing required under paragraph (c) of this section may be performed at the common stack if the following conditions are met. Otherwise, testing of the individual units (or a subset of the units, if identical, as described in paragraph (c)(1)(iv) of this section) is required:

(A) The testing must be done at a combined load corresponding to the designated normal load level (low, mid, or high) for the units sharing the common stack, in accordance with section 6.5.2.1 of appendix A to this part;

(B) All of the units that share the stack must be operating in a normal, stable manner and at typical load levels during the emission testing. The coal combusted in each unit during the testing must be representative of the coal that will be combusted in that unit at the start of the Hg mass emission reduction program (preferably from the same source(s) of supply);

(C) If flue gas desulfurization and/or add-on Hg emission controls are used to reduce level the emissions exiting from the common stack, these emission controls must be operating normally during the emission testing and, for the purpose of establishing proper operation of the controls, the owner or operator shall record parametric data or SO_2 concentration data in accordance with § 75.58(b)(3)(i);

(D) When calculating E, the estimated maximum potential annual Hg mass emissions from the stack, substitute the maximum potential flow rate through the common stack (as defined in the monitoring plan) and the highest concentration from any test run (or 0.50 μg/scm, if greater) into Equation 1;

(E) The calculated value of E shall be divided by the number of units sharing the stack. If the result, when rounded to the nearest ounce, does not exceed 464 ounces, the units qualify to use the low mass emission methodology; and

(F) If the units qualify to use the methodology, the default Hg concentration used for reporting at the common stack shall be the highest value obtained in any test run or 0.50 μg/scm, whichever is greater; or

(ii) The retests required under paragraph (d)(4) of this section may also be done at the common stack. If this testing option is chosen, the testing shall be done at a combined load corresponding to the designated normal load level (low, mid, or high) for the units sharing the common stack, in accordance with section 6.5.2.1 of appendix A to this part. Provided that the required load level is attained and that all of the units sharing the stack are fed from the same on-site coal supply during normal operation, it is not necessary for all of the units sharing the stack to be in operation during a retest. However, if two or more of the units that share the stack are fed from different on-site coal supplies (e.g., one unit burns low-sulfur coal for compliance and the other combusts higher-sulfur coal), then either:

(A) Perform the retest with all units in normal operation; or

(B) If this is not possible, due to circumstances beyond the control of the owner or operator (e.g., a forced unit outage), perform the retest with the available units operating and assess the test results as follows. Use the Hg concentration obtained in the retest for reporting purposes under this part if the concentration is greater than or equal to the value obtained in the most recent test. If the retested value is lower than the Hg concentration from the previous test, continue using the higher value from the previous test for reporting purposes and use that same higher Hg concentration value in Equation 1 to determine the due date for the next retest, as described in paragraph (e)(1)(iii) of this section.

(iii) If testing is done at the common stack, the due date for the next scheduled retest shall be determined as follows:

(A) Substitute the maximum potential flow rate for the common stack (as defined in the monitoring plan) and the highest Hg concentration from any test run (or 0.50 μg/scm, if greater) into Equation 1;

(B) If the value of E obtained from Equation 1, rounded to the nearest ounce, is greater than 144 times the number of units sharing the common stack, but less than or equal to 464 times the number of units sharing the stack, the next retest is due in two QA operating quarters;

(C) If the value of E obtained from Equation 1, rounded to the nearest ounce, is less than or equal to 144 times the number of units sharing the common stack, the next retest is due in four QA operating quarters.

* * * * *

■ 38. Section 75.82 is amended by:

■ a. Adding paragraph (b)(3);

■ b. Removing the word ''or'' at the end of paragraph (c)(2);

■ c. Removing the period at the end of paragraph (c)(3), and adding in its place the phrase ''; or'';
■ d. Adding paragraph (c)(4);
■ e. Removing the word ''or'' at the end of paragraph (d)(1);
■ f. Removing the period at the end of paragraph (d)(2), and adding in its place the phrase ''; or''; and
■ g. Adding paragraph (d)(3).

The revisions and additions read as follows:

§ 75.82 Monitoring of Hg mass emissions and heat input at common and multiple stacks.

* * * * *

(b) * * *

(3) If the monitoring option in paragraph (b)(2) of this section is selected, and if heat input is required to be reported under the applicable State or Federal Hg mass emission reduction program that adopts the requirements of this subpart, the owner or operator shall either:

(i) Apportion the common stack heat input rate to the individual units according to the procedures in § 75.16(e)(3); or

(ii) Install a flow monitoring system and a diluent gas (O_2 or CO_2) monitoring system in the duct leading from each affected unit to the common stack, and measure the heat input rate in each duct, according to section 5.2 of appendix F to this part.

(c) * * *

(4) If the monitoring option in paragraph (c)(1) or (c)(2) of this section is selected, and if heat input is required to be reported under the applicable State or Federal Hg mass emission reduction program that adopts the requirements of this subpart, the owner or operator shall:

(i) Use the installed flow and diluent monitors to determine the hourly heat input rate at each stack (mmBtu/hr), according to section 5.2 of appendix F to this part; and

(ii) Calculate the hourly heat input at each stack (in mmBtu) by multiplying the measured stack heat input rate by the corresponding stack operating time; and

(iii) Determine the hourly unit heat input by summing the hourly stack heat input values.

(d) * * *

(3) If the monitoring option in paragraph (d)(1) or (d)(2) of this section is selected, and if heat input is required to be reported under the applicable State or Federal Hg mass emission reduction program that adopts the requirements of this subpart, the owner or operator shall:

(i) Use the installed flow and diluent monitors to determine the hourly heat input rate at each stack or duct (mmBtu/hr), according to section 5.2 of appendix F to this part; and

(ii) Calculate the hourly heat input at each stack or duct (in mmBtu) by multiplying the measured stack (or duct) heat input rate by the corresponding stack (or duct) operating time; and

(iii) Determine the hourly unit heat input by summing the hourly stack (or duct) heat input values.

■ 39. Section 75.84 is amended by:
■ a. Removing ''§ 75.53(e)(1)'' and ''§ 75.53(e)(2)'' and adding in their place ''§ 75.53(g)(1)'' and ''§ 75.53(g)(2)'', in paragraph (c)(3);
■ b. Removing the number ''45'' and adding in its place the number ''21'' in paragraphs (e)(1) and (e)(2);
■ c. Revising paragraph (f)(1) introductory text;
■ d. Removing ''§ 75.64(a)(1)'' and adding in its place ''§ 75.64(a)(3)'' in paragraph (f)(1)(i);
■ e. Removing the phrase ''paragraph (a)'' and adding in its place the phrase ''paragraphs (a) and (b)'' in paragraph (f)(1)(ii) introductory text; and
■ f. Revising paragraph (f)(1)(ii)(I).

The revisions read as follows:

§ 75.84 Recordkeeping and reporting.

* * * * *

(f) * * *

(1) *Electronic submission.* Electronic quarterly reports shall be submitted, beginning with the calendar quarter containing the compliance date in § 75.80(b), unless otherwise specified in the final rule implementing a State or Federal Hg mass emissions reduction program that adopts the requirements of this subpart. The designated representative for an affected unit shall report the data and information in this paragraph (f)(1) and the applicable compliance certification information in paragraph (f)(2) of this section to the Administrator quarterly, except as otherwise provided in § 75.64(a) for units in long-term cold storage. Each electronic report must be submitted to the Administrator within 30 days following the end of each calendar quarter. Except as otherwise provided in § 75.64(a)(4) and (a)(5), each electronic report shall include the date of report generation and the following information for each affected unit or group of units monitored at a common stack:

* * * * *

(ii) * * *

(I) Supplementary RATA information required under § 75.59(a)(7), except that:

(*1*) The applicable data elements under § 75.59(a)(7)(ii)(A) through (T) and under § 75.59(a)(7)(iii)(A) through (M) shall be reported for flow RATAs at circular or rectangular stacks (or ducts) in which angular compensation for yaw and/or pitch angles is used (i.e., Method 2F or 2G in appendices A–1 and A–2 to part 60 of this chapter), with or without wall effects adjustments;

(*2*) The applicable data elements under § 75.59(a)(7)(ii)(A) through (T) and under § 75.59(a)(7)(iii)(A) through (M) shall be reported for any flow RATA run at a circular stack in which Method 2 in appendices A–1 and A–2 to part 60 of this chapter is used and a wall effects adjustment factor is determined by direct measurement;

(*3*) The data under § 75.59(a)(7)(ii)(T) shall be reported for all flow RATAs at circular stacks in which Method 2 in appendices A–1 and A–2 to part 60 of this chapter is used and a default wall effects adjustment factor is applied; and

(*4*) The data under § 75.59(a)(7)(ix)(A) through (F) shall be reported for all flow RATAs at rectangular stacks or ducts in which Method 2 in appendices A–1 and A–2 to part 60 of this chapter is used and a wall effects adjustment factor is applied.

* * * * *

■ 40. Appendix A to Part 75 is amended by:
■ a. Revising paragraph (c) of section 2.1.1.1;
■ b. Revising paragraph (b)(2) of section 2.1.1.5;
■ c. Revising paragraph (b)(2) of section 2.1.2.5;
■ d. Adding a new fourth sentence after the third sentence of section 2.1.3;
■ e. Revising paragraph (3) of section 3.2;
■ f. Removing the phrase ''continuous emission monitoring system(s)'' and adding in its place the phrase ''monitoring component of a continuous emission monitoring system that is'' in section 3.5;
■ g. Adding the words ''that meet the definition for a NIST Traceable Reference Material (NTRM) provided in § 72.2.'' after the word ''gases'' in section 5.1.3;
■ h. Revising sections 5.1.4 and 5.1.9;
■ i. Redesignating section 6.1 as section 6.1.1 and adding a new heading for 6.1;
■ j. Adding section 6.1.2;
■ k. Revising the second and third sentences and adding a new fourth sentence to section 6.2, introductory text;
■ l. Revising section 6.2(g);
■ m. Adding paragraph (h) to section 6.2;
■ n. Adding a new fourth sentence to section 6.3.1, introductory text;
■ o. Revising the introductory text of section 6.4;

■ p. Revising paragraph (e) in section 6.5;

■ q. Removing the words ''that uses CEMS to account for its emissions and for each unit that uses the optional fuel flow-to-load quality assurance test in section 2.1.7 of appendix D to this part'' from paragraph (a) of section 6.5.2.1;

■ r. Adding the words ''or mmBtu/hr'' after the words ''klb/hr of steam production'', and by adding the words ''or mmBtu/hr of thermal output'' after the words ''thousands of lb/hr of steam load'' in paragraph (a)(1) of section 6.5.2.1;

■ s. Adding the words ''and units using the low mass emissions (LME) excepted methodology under § 75.19'' after the words ''(except for peaking units'' in the second sentence in paragraph (c) of section 6.5.2.1;

■ t. Adding the words ''and LME units'' after the words ''For peaking units'' in the third sentence in paragraph (d)(1) of section 6.5.2.1;

■ u. Revising paragraph (e) of section 6.5.2.1;

■ v. Revising paragraph (c) in section 6.5.6;

■ w. Removing all occurrences of the words ''section 3.2'' and adding in its place the words ''section 8.1.3'' in paragraph (b)(3) of section 6.5.6, paragraph (a) of section 6.5.6.2, and paragraph (a) of section 6.5.6.3;

■ x. Revising section 6.5.10;

■ y. Adding two sentences at the end of section 7.6.1;

■ z. Revising the terms R_{ref} and L_{avg}, in paragraph (a) of section 7.7;

■ aa. Revising the terms $(GHR)_{ref}$ and L_{avg}, in paragraph (c) of section 7.7; and

■ bb. Removing Figure 6 and adding in its place Figures 6a and 6b and revising A through F and adding G at the end of appendix A.

The revisions and additions read as follows:

Appendix A to Part 75—Specifications and Procedures

* * * * *

2. Equipment Specifications

2.1.1.1 Maximum Potential Concentration

* * * * *

(c) When performing fuel sampling to determine the MPC, use ASTM Methods: ASTM D3177–02 (Reapproved 2007), Standard Test Methods for Total Sulfur in the Analysis Sample of Coal and Coke; ASTM D4239–02, Standard Test Methods for Sulfur in the Analysis Sample of Coal and Coke Using High-Temperature Tube Furnace Combustion Methods; ASTM D4294–98, Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectrometry; ASTM D1552–01, Standard Test Method for Sulfur in Petroleum Products (High-Temperature Method); ASTM D129–00, Standard Test Method for Sulfur in Petroleum Products (General Bomb Method); ASTM D2622–98, Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-ray Fluorescence Spectrometry, for sulfur content of solid or liquid fuels; ASTM D3176–89 (Reapproved 2002), Standard Practice for Ultimate Analysis of Coal and Coke; ASTM D240–00, Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter; or ASTM D5865–01a, Standard Test Method for Gross Calorific Value of Coal and Coke (all incorporated by reference under § 75.6 of this part).

* * * * *

2.1.1.5 * * *

(b) * * *

(2) For units with two SO_2 spans and ranges, if the low range is exceeded, no further action is required, provided that the high range is available and its most recent calibration error test and linearity check have not expired. However, if either of these quality assurance tests has expired and the high range is not able to provide quality assured data at the time of the low range exceedance or at any time during the continuation of the exceedance, report the MPC as the SO_2 concentration until the readings return to the low range or until the high range is able to provide quality assured data (unless the reason that the high-scale range is not able to provide quality assured data is because the high-scale range has been exceeded; if the high-scale range is exceeded follow the procedures in paragraph (b)(1) of this section).

* * * * *

2.1.2.5 * * *

(b) * * *

(2) For units with two NO_X spans and ranges, if the low range is exceeded, no further action is required, provided that the high range is available and its most recent calibration error test and linearity check have not expired. However, if either of these quality assurance tests has expired and the high range is not able to provide quality assured data at the time of the low range exceedance or at any time during the continuation of the exceedance, report the MPC as the NO_X concentration until the readings return to the low range or until the high range is able to provide quality assured data (unless the reason that the high-scale range is not able to provide quality assured data is because the high-scale range has been exceeded; if the high-scale range is exceeded, follow the procedures in paragraph (b)(1) of this section).

* * * * *

2.1.3 CO_2 and O_2 Monitors

* * * An alternative CO_2 span value below 6.0 percent may be used if an appropriate technical justification is included in the hardcopy monitoring plan.

* * * * *

3.2 * * *

(3) For the linearity check and the 3-level system integrity check of an Hg monitor, which are required, respectively, under § 75.20(c)(1)(ii) and (c)(1)(vi), the measurement error shall not exceed 10.0 percent of the reference value at any of the three gas levels. To calculate the measurement error at each level, take the absolute value of the difference between the reference value and mean CEM response, divide the result by the reference value, and then multiply by 100. Alternatively, the results at any gas level are acceptable if the absolute value of the difference between the average monitor response and the average reference value, *i.e.*, $|R - A|$ in Equation A–4 of this appendix, does not exceed 0.8 $\mu g/m^3$. The principal and alternative performance specifications in this section also apply to the single-level system integrity check described in section 2.6 of appendix B to this part.

* * * * *

5.1 *Reference Gases*

* * * * *

5.1.4 EPA Protocol Gases

(a) An EPA Protocol Gas is a calibration gas mixture prepared and analyzed according to Section 2 of the ''EPA Traceability Protocol for Assay and Certification of Gaseous Calibration Standards,'' September 1997, EPA–600/R–97/121 or such revised procedure as approved by the Administrator (EPA Traceability Protocol).

(b) An EPA Protocol Gas must have a specialty gas producer-certified uncertainty (95-percent confidence interval) that must not be greater than 2.0 percent of the certified concentration (tag value) of the gas mixture. The uncertainty must be calculated using the statistical procedures (or equivalent statistical techniques) that are listed in Section 2.1.8 of the EPA Traceability Protocol.

(c) On and after January 1, 2009, a specialty gas producer advertising calibration gas certification with the EPA Traceability Protocol or distributing calibration gases as ''EPA Protocol Gas'' must participate in the EPA Protocol Gas Verification Program (PGVP) described in Section 2.1.10 of the EPA Traceability Protocol or it cannot use ''EPA'' in any form of advertising for these products, unless approved by the Administrator. A specialty gas producer not participating in the PGVP may not certify a calibration gas as an EPA Protocol Gas, unless approved by the Administrator.

(d) A copy of EPA–600/R–97/121 is available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA, 703–605–6585 or *http://www.ntis.gov,* and from *http://www.epa.gov/ttn/emc/news.html* or *http://www.epa.gov/appcdwww/tsb/index.html.*

* * * * *

5.1.9 Mercury Standards

For 7-day calibration error tests of Hg concentration monitors and for daily calibration error tests of Hg monitors, either NIST-traceable elemental Hg standards (as defined in § 72.2 of this chapter) or a NIST-traceable source of oxidized Hg (as defined in § 72.2 of this chapter) may be used. For linearity checks, NIST-traceable elemental Hg standards shall be used. For 3-level and single-point system integrity checks under § 75.20(c)(1)(vi), sections 6.2(g) and 6.3.1 of this appendix, and sections 2.1.1, 2.2.1 and 2.6 of appendix B to this part, a NIST-traceable source of oxidized Hg shall be used.

Alternatively, other NIST-traceable standards may be used for the required checks, subject to the approval of the Administrator. Notwithstanding these requirements, Hg calibration standards that are not NIST-traceable may be used for the tests described in this section until December 31, 2009. However, on and after January 1, 2010, only NIST-traceable calibration standards shall be used for these tests.

* * * * *

6.1 *General Requirements*

* * * * *

6.1.2 *Requirements for Air Emission Testing Bodies*

(a) On and after January 1, 2009, any Air Emission Testing Body (AETB) conducting relative accuracy test audits of CEMS and sorbent trap monitoring systems under this part must conform to the requirements of ASTM D7036–04 (incorporated by reference under § 75.6 of this part). This section is not applicable to daily operation, daily calibration error checks, daily flow interference checks, quarterly linearity checks or routine maintenance of CEMS.

(b) The AETB shall provide to the affected source(s) certification that the AETB operates in conformance with, and that data submitted to the Agency has been collected in accordance with, the requirements of ASTM D7036–04 (incorporated by reference under § 75.6 of this part). This certification may be provided in the form of:

(1) A certificate of accreditation of relevant scope issued by a recognized, national accreditation body; or

(2) A letter of certification signed by a member of the senior management staff of the AETB.

(c) The AETB shall either provide a Qualified Individual on-site to conduct or shall oversee all relative accuracy testing carried out by the AETB as required in ASTM D7036–04 (incorporated by reference under § 75.6 of this part). The Qualified Individual shall provide the affected source(s) with copies of the qualification credentials relevant to the scope of the testing conducted.

* * * * *

6.2 *Linearity Check (General Procedures)*

* * * Notwithstanding these requirements, if the SO_2 or NO_X span value for a particular monitor range is ≤ 30 ppm, that range is exempted from the linearity check requirements of this part, for initial certification, recertification, and for on-going quality-assurance. For units with two measurement ranges (high and low) for a particular parameter, perform a linearity check on both the low scale (except for SO_2 or NO_X span values ≤ 30 ppm) and the high scale. Note that for a NO_X-diluent monitoring system with two NO_X measurement ranges, if the low NO_X scale has a span value ≤ 30 ppm and is exempt from linearity checks, this does not exempt either the diluent monitor or the high NO_X scale (if the span is > 30 ppm) from linearity check requirements.

* * * * *

(g) For Hg monitors, follow the guidelines in section 2.2.3 of this appendix in addition to the applicable procedures in section 6.2 when performing the system integrity checks described in § 75.20(c)(1)(vi) and in sections 2.1.1, 2.2.1 and 2.6 of appendix B to this part.

(h) For Hg concentration monitors, if moisture is added to the calibration gas during the required linearity checks or system integrity checks, the moisture content of the calibration gas must be accounted for. Under these circumstances, the dry basis concentration of the calibration gas shall be used to calculate the linearity error or measurement error (as applicable).

* * * * *

6.3.1 *Gas Monitor 7-day Calibration Error Test*

* * * Also for Hg monitors, if moisture is added to the calibration gas, the added moisture must be accounted for and the dry-basis concentration of the calibration gas shall be used to calculate the calibration error.

* * * * *

6.4. *Cycle Time Test*

Perform cycle time tests for each pollutant concentration monitor and continuous emission monitoring system while the unit is operating, according to the following procedures. Use a zero-level and a high-level calibration gas (as defined in section 5.2 of this appendix) alternately. For Hg monitors, the calibration gas used for this test may either be the elemental or oxidized form of Hg. To determine the downscale cycle time, measure the concentration of the flue gas emissions until the response stabilizes. Record the stable emissions value. Inject a zero-level concentration calibration gas into the probe tip (or injection port leading to the calibration cell, for in situ systems with no probe). Record the time of the zero gas injection, using the data acquisition and handling system (DAHS). Next, allow the monitor to measure the concentration of the zero gas until the response stabilizes. Record the stable ending calibration gas reading. Determine the downscale cycle time as the time it takes for 95.0 percent of the step change to be achieved between the stable stack emissions value and the stable ending zero gas reading. Then repeat the procedure, starting with stable stack emissions and injecting the high-level gas, to determine the upscale cycle time, which is the time it takes for 95.0 percent of the step change to be achieved between the stable stack emissions value and the stable ending high-level gas reading. Use the following criteria to assess when a stable reading of stack emissions or calibration gas concentration has been attained. A stable value is equivalent to a reading with a change of less than 2.0 percent of the span value for 2 minutes, or a reading with a change of less than 6.0 percent from the measured average concentration over 6 minutes. Alternatively, the reading is considered stable if it changes by no more than 0.5 ppm, 0.5 $\mu g/m^3$ (for Hg), or 0.2% CO_2 or O_2 (as applicable) for two minutes. (Owners or operators of systems which do not record data in 1-minute or 3-minute intervals may petition the Administrator under § 75.66 for alternative stabilization criteria). For monitors or monitoring systems that perform a series of operations (such as purge, sample, and analyze), time the injections of the calibration gases so they will produce the longest possible cycle time. Refer to Figures 6a and 6b in this appendix for example calculations of upscale and downscale cycle times. Report the slower of the two cycle times (upscale or downscale) as the cycle time for the analyzer. Prior to January 1, 2009 for the NO_X-diluent continuous emission monitoring system test, either record and report the longer cycle time of the two component analyzers as the system cycle time or record the cycle time for each component analyzer separately (as applicable). On and after January 1, 2009, record the cycle time for each component analyzer separately. For time-shared systems, perform the cycle time tests at each probe locations that will be polled within the same 15-minute period during monitoring system operations. To determine the cycle time for time-shared systems, at each monitoring location, report the sum of the cycle time observed at that monitoring location plus the sum of the time required for all purge cycles (as determined by the continuous emission monitoring system manufacturer) at each of the probe locations of the time-shared systems. For monitors with dual ranges, report the test results for each range separately. Cycle time test results are acceptable for monitor or monitoring system certification, recertification or diagnostic testing if none of the cycle times exceed 15 minutes. The status of emissions data from a monitor prior to and during a cycle time test period shall be determined as follows:

* * * * *

6.5 * * *

(e) Complete each single-load relative accuracy test audit within a period of 168 consecutive unit operating hours, as defined in § 72.2 of this chapter (or, for CEMS installed on common stacks or bypass stacks, 168 consecutive stack operating hours, as defined in § 72.2 of this chapter). Notwithstanding this requirement, up to 336 consecutive unit or stack operating hours may be taken to complete the RATA of a Hg monitoring system, when ASTM 6784–02 (incorporated by reference under § 75.6 of this part) or Method 29 in appendix A–8 to part 60 of this chapter is used as the reference method. For 2-level and 3-level flow monitor RATAs, complete all of the RATAs at all levels, to the extent practicable, within a period of 168 consecutive unit (or stack) operating hours; however, if this is not possible, up to 720 consecutive unit (or stack) operating hours may be taken to complete a multiple-load flow RATA.

* * * * *

6.5.2.1 * * *

(e) The owner or operator shall report the upper and lower boundaries of the range of operation for each unit (or combination of units, for common stacks), in units of megawatts or thousands of lb/hr or mmBtu/hr of steam production or ft/sec (as applicable), in the electronic monitoring plan required under § 75.53. Except for peaking units and LME units, the owner or operator shall indicate, in the electronic monitoring plan, the load level (or levels) designated as normal under this section and shall also indicate the two most frequently used load levels.

* * * * *

6.5.6 * * *

(c) For Hg monitoring systems, use the same basic approach for traverse point selection that is used for the other gas monitoring system RATAs, except that the stratification test provisions in sections 8.1.3 through 8.1.3.5 of Method 30A shall apply, rather than the provisions of sections 6.5.6.1 through 6.5.6.3 of this appendix.

6.5.10 *Reference Methods*

The following methods are from appendix A to part 60 of this chapter or have been published by ASTM, and are the reference methods for performing relative accuracy test audits under this part: Method 1 or 1A in appendix A–1 to part 60 of this chapter for siting; Method 2 in appendices A–1 and A–2 to part 60 of this chapter or its allowable alternatives in appendix A to part 60 of this chapter (except for Methods 2B and 2E in appendix A–1 to part 60 of this chapter) for stack gas velocity and volumetric flow rate; Methods 3, 3A or 3B in appendix A–2 to part 60 of this chapter for O_2 and CO_2; Method 4 in appendix A–3 to part 60 of this chapter for moisture; Methods 6, 6A or 6C in appendix A–4 to part 60 of this chapter for SO_2; Methods 7, 7A, 7C, 7D or 7E in appendix A–4 to part 60 of this chapter for NO_X, excluding the exceptions of Method 7E in appendix A–4 to part 60 of this chapter identified in § 75.22(a)(5); and for Hg, either ASTM D6784–02 (the Ontario Hydro Method) (incorporated by reference under § 75.6 of this part), Method 29 in appendix A–8 to part 60 of this chapter, Method 30A, or Method 30B When using Method 7E in appendix A–4 to part 60 of this chapter for measuring NO_X concentration, total NO_X, both NO and NO_2, must be measured.

* * * * *

7.6 *Bias Test and Adjustment Factor*

* * * * *

7.6.1 * * * To calculate bias for a Hg monitoring system when using the Ontario Hydro Method or Method 29 in appendix A–8 to part 60 of this chapter, ''d'' is, for each data point, the difference between the average Hg concentration value (in $\mu g/m^3$) from the paired Ontario Hydro or Method 29 in appendix A–8 to part 60 of this chapter sampling trains and the concentration measured by the monitoring system. For sorbent trap monitoring systems, use the average Hg concentration measured by the paired traps in the calculation of ''d''.

* * * * *

7.7 * * *

(a) * * *

R_{ref} = Reference value of the flow-to-load ratio, from the most recent normal-load flow RATA, scfh/megawatts, scfh/1000 lb/hr of steam, or scfh/(mmBtu/hr of steam output).

* * * * *

L_{avg} = Average unit load during the normal-load flow RATA, megawatts, 1000 lb/hr of steam, or mmBtu/hr of thermal output.

* * * * *

(c) * * *

$(GHR)_{ref}$ = Reference value of the gross heat rate at the time of the most recent normal-load flow RATA, Btu/kwh, Btu/lb steam load, or Btu heat input/mmBtu steam output.

* * * * *

L_{avg} = Average unit load during the normal-load flow RATA, megawatts, 1000 lb/hr of steam, or mmBtu/hr thermal output.

Figure 6a. Upscale Cycle Time Test

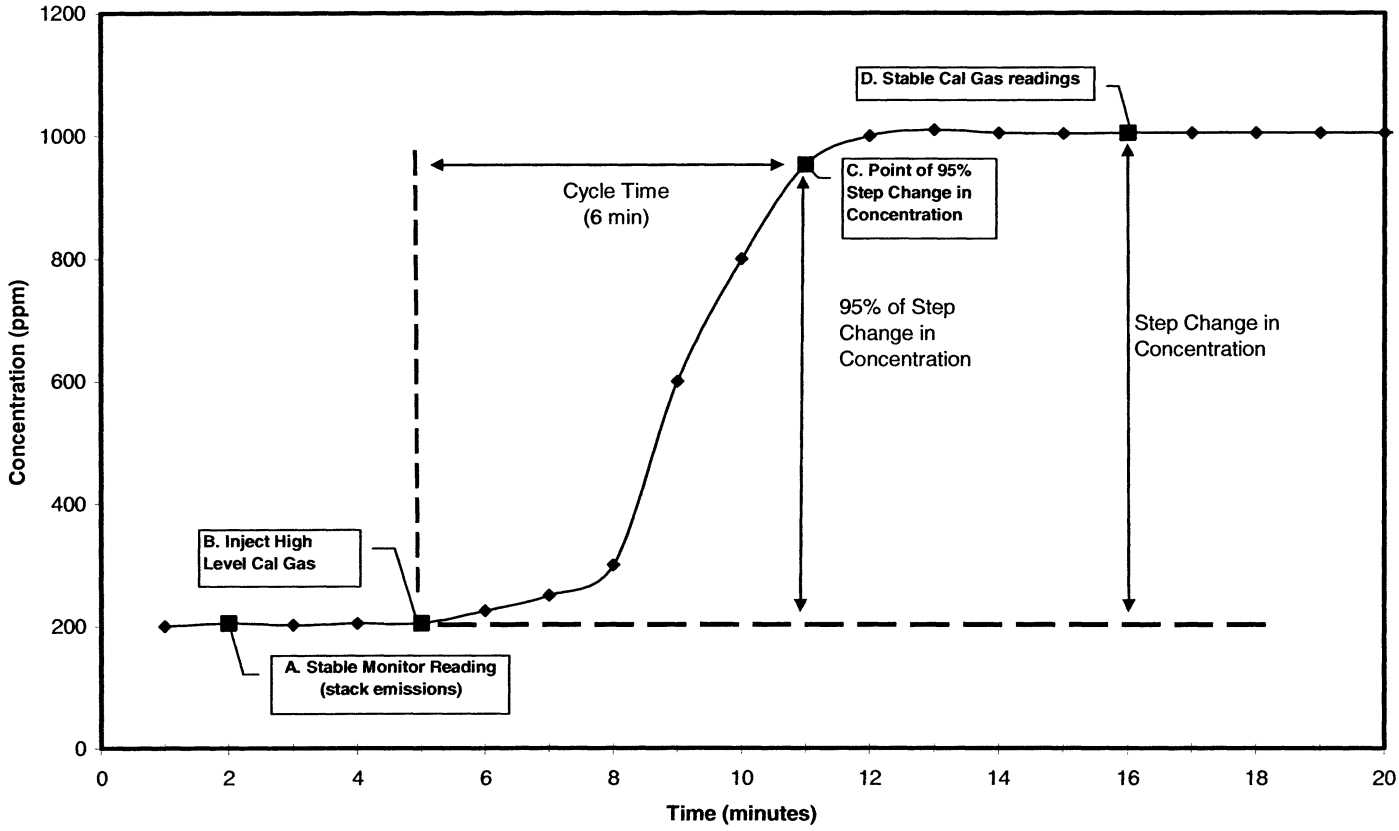
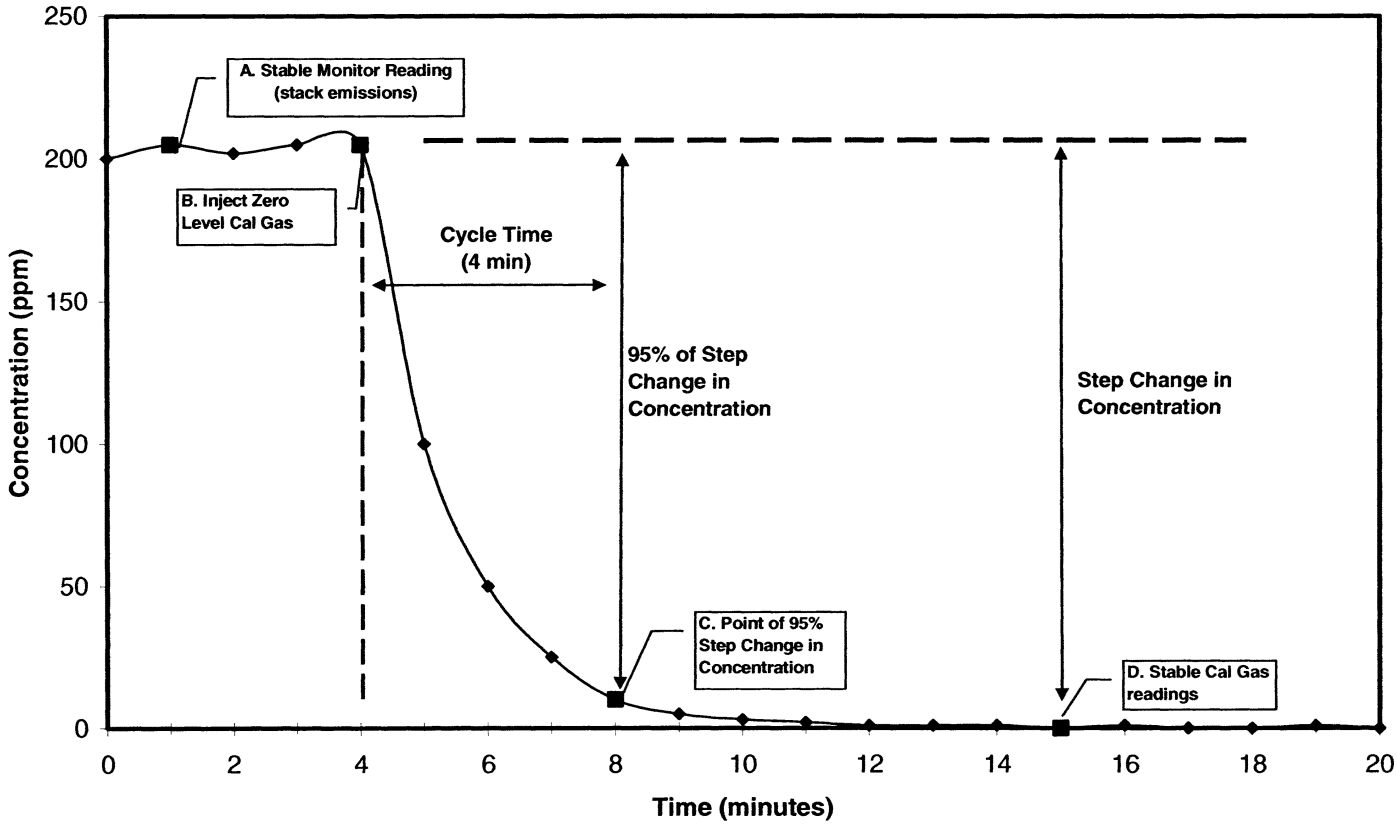


Figure 6b. Downscale Cycle Time Test



A. To determine the upscale cycle time (Figure 6a), measure the flue gas emissions until the response stabilizes. Record the stabilized value (see section 6.4 of this appendix for the stability criteria).

B. Inject a high-level calibration gas into the port leading to the calibration cell or thimble (Point B). Allow the analyzer to stabilize. Record the stabilized value.

C. Determine the step change. The step change is equal to the difference between the final stable calibration gas value (Point D) and the stabilized stack emissions value (Point A).

D. Take 95% of the step change value and add the result to the stabilized stack emissions value (Point A). Determine the time at which 95% of the step change occurred (Point C).

E. Calculate the upscale cycle time by subtracting the time at which the calibration gas was injected (Point B) from the time at which 95% of the step change occurred (Point C). In this example, upscale cycle time = (11 − 5) = 6 minutes.

F. To determine the downscale cycle time (Figure 6b) repeat the procedures above, except that a zero gas is injected when the flue gas emissions have stabilized, and 95% of the step change in concentration is subtracted from the stabilized stack emissions value.

G. Compare the upscale and downscale cycle time values. The longer of these two times is the cycle time for the analyzer.

■ 41. Appendix B to Part 75 is amended by:

■ a. Adding section 1.1.4;

■ b. Revising section 2.1.1;

■ c. Revising paragraph (2) of section 2.1.1.2;

■ d. Revising paragraph (2) of section 2.1.5.1;

■ e. Adding paragraph (3) to section 2.1.5.1;

■ f. Adding a new fourth sentence to paragraph (e) of section 2.2.3;

■ g. Revising the terms ''R_h'' and ''L_h'' in paragraph (a) of section 2.2.5;

■ h. Revising the terms ''$(GHR)_h$'' and ''L_h'' in paragraph (a)(2) of section 2.2.5;

■ i. Removing the word ''five'' and adding in its place the word ''twenty'', and by removing the word ''years'' and adding in its place the word ''quarters'', in paragraph (c)(4) of section 2.3.1.3;

■ j. Revising paragraphs (d) and (g) of section 2.3.2;

■ k. Revising paragraphs (a)(2) and (c) of section 2.3.3;

■ l. Adding paragraph (d) to section 2.3.3;

■ m. Revising section 2.6;

■ n. Revising Figure 1; and

■ o. Revising Figure 2.

The revisions and additions read as follows:

Appendix B to Part 75—Quality Assurance and Quality Control Procedures

1. Quality Assurance/Quality Control Program

* * * * *

1.1.4 The requirements in section 6.1.2 of appendix A to this part shall be met by any Air Emissions Testing Body (AETB) performing the semiannual/annual RATAs described in section 2.3 of this appendix and the Hg emission tests described in §§ 75.81(c) and 75.81(d)(4).

* * * * *

2. Frequency of Testing

* * * * *

2.1.1 Calibration Error Test

Except as provided in section 2.1.1.2 of this appendix, perform the daily calibration error test of each gas monitoring system (including moisture monitoring systems consisting of wet- and dry-basis O_2 analyzers) according to the procedures in section 6.3.1 of appendix A to this part, and perform the daily calibration error test of each flow monitoring system according to the procedure in section 6.3.2 of appendix A to this part. When two measurement ranges (low and high) are required for a particular parameter, perform sufficient calibration error tests on each range to validate the data recorded on that range, according to the criteria in section 2.1.5 of this appendix.

* * * * *

2.1.1.2 * * *

(2) For each monitoring system that has passed the off-line calibration demonstration, off-line calibration error tests may be used on a limited basis to validate data, in accordance with paragraph (2) in section 2.1.5.1 of this appendix.

* * * * *

2.1.5.1 * * *

(2) For a monitor that has passed the off-line calibration demonstration, a combination of on-line and off-line calibration error tests may be used to validate data from the monitor, as follows. For a particular unit (or stack) operating hour, data from a monitor may be validated using a successful off-line calibration error test if: (a) An on-line calibration error test has been passed within the previous 26 unit (or stack) operating hours; and (b) the 26 clock hour data validation window for the off-line calibration error test has not expired. If either of these conditions is not met, then the data from the monitor are invalid with respect to the daily calibration error test requirement. Data from the monitor shall remain invalid until the appropriate on-line or off-line calibration error test is successfully completed so that both conditions (a) and (b) are met.

(3) For units with two measurement ranges (low and high) for a particular parameter, when separate analyzers are used for the low and high ranges, a failed or expired calibration on one of the ranges does not affect the quality-assured data status on the other range. For a dual-range analyzer (i.e., a single analyzer with two measurement scales), a failed calibration error test on either the low or high scale results in an out-of-control period for the monitor. Data from the monitor remain invalid until corrective actions are taken and ''hands-off'' calibration error tests have been passed on both ranges. However, if the most recent calibration error test on the high scale was passed but has expired, while the low scale is up-to-date on its calibration error test requirements (or vice-versa), the expired calibration error test does not affect the quality-assured status of the data recorded on the other scale.

* * * * *

2.2.3 * * *

(e) * * * For a dual-range analyzer, ''hands-off'' linearity checks must be passed on both measurement scales to end the out-of-control period. * * *

* * * * *

2.2.5 * * *

(a) * * *

R_h = Hourly value of the flow-to-load ratio, scfh/megawatts, scfh/1000 lb/hr of steam, or scfh/(mmBtu/hr thermal output).

* * * * *

L_h = Hourly unit load, megawatts, 1000 lb/hr of steam, or mmBtu/hr thermal output; must be within + 10.0 percent of L_{avg} during the most recent normal-load flow RATA.

* * * * *

(2) * * *

$(GHR)_h$ = Hourly value of the gross heat rate, Btu/kwh, Btu/lb steam load, or 1000 mmBtu heat input/mmBtu thermal output.

* * * * *

L_h = Hourly unit load, megawatts, 1000 lb/hr of steam, or mmBtu/hr thermal output; must be within + 10.0 percent of L_{avg} during the most recent normal-load flow RATA.

* * * * *

2.3.2 * * *

(d) For single-load (or single-level) RATAs, if a daily calibration error test is failed during a RATA test period, prior to completing the test, the RATA must be repeated. Data from the monitor are invalidated prospectively from the hour of the failed calibration error test until the hour of completion of a subsequent successful calibration error test. The subsequent RATA shall not be commenced until the monitor has successfully passed a calibration error test in accordance with section 2.1.3 of this appendix. Notwithstanding these requirements, when ASTM D6784–02 (incorporated by reference under § 75.6 of this part) or Method 29 in appendix A–8 to part 60 of this chapter is used as the reference method for the RATA of a Hg CEMS, if a calibration error test of the CEMS is failed during a RATA test period, any test run(s) completed prior to the failed calibration error test need not be repeated; however, the RATA may not continue until a subsequent calibration error test of the Hg CEMS has been passed. For multiple-load (or multiple-level) flow RATAs, each load level (or operating level) is treated as a separate RATA (*i.e.,* when a calibration error test is failed prior to completing the RATA at a particular load level (or operating level), only the RATA at that load level (or operating level) must be repeated; the results of any previously-passed RATA(s) at the other load level(s) (or operating level(s)) are unaffected, unless re-linearization of the monitor is required to correct the problem that caused the calibration failure, in which case a subsequent 3-load (or 3-level) RATA is required), except as otherwise provided in section 2.3.1.3(c)(5) of this appendix.

* * * * *

(g) Data validation for failed RATAs for a CO_2 pollutant concentration monitor (or an O_2 monitor used to measure CO_2 emissions), a NO_X pollutant concentration monitor, and a NO_X-diluent monitoring system shall be done according to paragraphs (g)(1) and (g)(2) of this section:

(1) For a CO_2 pollutant concentration monitor (or an O_2 monitor used to measure CO_2 emissions) which also serves as the diluent component in a NO_X-diluent monitoring system, if the CO_2 (or O_2) RATA is failed, then both the CO_2 (or O_2) monitor and the associated NO_X-diluent system are considered out-of-control, beginning with the hour of completion of the failed CO_2 (or O_2) monitor RATA, and continuing until the hour of completion of subsequent hands-off RATAs which demonstrate that both systems have met the applicable relative accuracy specifications in sections 3.3.2 and 3.3.3 of appendix A to this part, unless the option in paragraph (b)(3) of this section to use the data validation procedures and associated timelines in § 75.20(b)(3)(ii) through (b)(3)(ix) has been selected, in which case the beginning and end of the out-of-control period shall be determined in accordance with § 75.20(b)(3)(vii)(A) and (B).

(2) This paragraph (g)(2) applies only to a NO_X pollutant concentration monitor that serves both as the NO_X component of a NO_X concentration monitoring system (to measure NO_X mass emissions) and as the NO_X component in a NO_X-diluent monitoring system (to measure NO_X emission rate in lb/mmBtu). If the RATA of the NO_X concentration monitoring system is failed, then both the NO_X concentration monitoring system and the associated NO_X-diluent monitoring system are considered out-of-control, beginning with the hour of completion of the failed NO_X concentration RATA, and continuing until the hour of completion of subsequent hands-off RATAs which demonstrate that both systems have met the applicable relative accuracy specifications in sections 3.3.2 and 3.3.7 of appendix A to this part, unless the option in paragraph (b)(3) of this section to use the data validation procedures and associated timelines in § 75.20(b)(3)(ii) through (b)(3)(ix) has been selected, in which case the beginning and end of the out-of-control period shall be determined in accordance with § 75.20(b)(3)(vii)(A) and (B).

* * * * *

2.3.3 RATA Grace Period

(a) * * *

(2) A required 3-load flow RATA has not been performed by the end of the calendar quarter in which it is due; or

* * * * *

(c) If, at the end of the 720 unit (or stack) operating hour grace period, the RATA has not been completed, data from the monitoring system shall be invalid, beginning with the first unit operating hour following the expiration of the grace period. Data from the CEMS remain invalid until the hour of completion of a subsequent hands-off RATA. The deadline for the next test shall be either two QA operating quarters (if a semiannual RATA frequency is obtained) or four QA operating quarters (if an annual RATA frequency is obtained) after the quarter in which the RATA is completed, not to exceed eight calendar quarters.

* * * * *

(d) When a RATA is done during a grace period in order to satisfy a RATA requirement from a previous quarter, the deadline for the next RATA shall determined as follows:

(1) If the grace period RATA qualifies for a reduced, (i.e., annual), RATA frequency the deadline for the next RATA shall be set at three QA operating quarters after the quarter in which the grace period test is completed.

(2) If the grace period RATA qualifies for the standard, (i.e., semiannual), RATA frequency the deadline for the next RATA shall be set at two QA operating quarters after the quarter in which the grace period test is completed.

(3) Notwithstanding these requirements, no more than eight successive calendar quarters shall elapse after the quarter in which the grace period test is completed, without a subsequent RATA having been conducted.

* * * * *

2.6 *System Integrity Checks for Hg Monitors*

For each Hg concentration monitoring system (except for a Hg monitor that does not have a converter), perform a single-point system integrity check weekly, i.e., at least once every 168 unit or stack operating hours, using a NIST-traceable source of oxidized Hg. Perform this check using a mid- or high-level gas concentration, as defined in section 5.2 of appendix A to this part. The performance specifications in paragraph (3) of section 3.2 of appendix A to this part must be met, otherwise the monitoring system is considered out-of-control, from the hour of the failed check until a subsequent system integrity check is passed. If a required system integrity check is not performed and passed within 168 unit or stack operating hours of last successful check, the monitoring system shall also be considered out of control, beginning with the 169th unit or stack operating hour after the last successful check, and continuing until a subsequent system integrity check is passed. This weekly check is not required if the daily calibration assessments in section 2.1.1 of this appendix are performed using a NIST-traceable source of oxidized Hg.

* * * * *

FIGURE 1 TO APPENDIX B OF PART 75.—QUALITY ASSURANCE TEST REQUIREMENTS

Test	Basic QA test frequency requirements *				
	Daily *	Weekly	Quarterly *	Semi-annual *	Annual
Calibration Error Test (2 pt.)	✔				
Interference Check (flow)	✔				
Flow-to-Load Ratio			✔		
Leak Check (DP flow monitors)			✔		
Linearity Check or System Integrity Check ** (3 pt.)			✔		
Single-point System Integrity Check **		✔			
RATA (SO_2, NO_X, CO_2, O_2, H_2O) [1]				✔	
RATA (All Hg monitoring systems)					✔
RATA (flow) [1 2]				✔	

* "Daily" means operating days, only. "Weekly" means once every 168 unit or stack operating hours. "Quarterly" means once every QA operating quarter. "Semiannual" means once every two QA operating quarters. "Annual" means once every four QA operating quarters.

** The system integrity check applies only to Hg monitors with converters. The single-point weekly system integrity check is not required if daily calibrations are performed using a NIST-traceable source of oxidized Hg. The 3-point quarterly system integrity check is not required if a linearity check is performed.

[1] Conduct RATA annually (i.e., once every four QA operating quarters), if monitor meets accuracy requirements to qualify for less frequent testing.

[2] For flow monitors installed on peaking units, bypass stacks, or units that qualify for single-level RATA testing under section 6.5.2(e) of this part, conduct all RATAs at a single, normal load (or operating level). For other flow monitors, conduct annual RATAs at two load levels (or operating levels). Alternating single-load and 2-load (or single-level and 2-level) RATAs may be done if a monitor is on a semiannual frequency. A single-load (or single-level) RATA may be done in lieu of a 2-load (or 2-level) RATA if, since the last annual flow RATA, the unit has operated at one load level (or operating level) for ≥85.0 percent of the time. A 3-level RATA is required at least once every five calendar years and whenever a flow monitor is re-linearized, except for flow monitors exempted from 3-level RATA testing under section 6.5.2(b) or 6.5.2(e) of appendix A to this part.

FIGURE 2 TO APPENDIX B OF PART 75.—RELATIVE ACCURACY TEST FREQUENCY INCENTIVE SYSTEM

RATA	Semiannual [W] (percent)	Annual [W]
SO_2 or NO_X [Y]	7.5% <RA ≤10.0% or ±15.0 ppm [X]	RA ≤ 7.5% or ±12.0 ppm [X].
SO_2-diluent	7.5% <RA ≤10.0% or ±0.030 lb/mmBtu [X]	RA ≤7.5% or ±0.025 lb/mmBtu =G5X.
NO_X-diluent	7.5% <RA ≤10.0% or ±0.020 lb/mmBtu [X]	RA ≤ 7.5% or ±0. 015 lb/mmBtu [X].
Flow	7.5% < RA ≤ 10.0% or ±2.0 fps [X]	RA ≤ 7.5% or ±1.5 fps [X].
CO_2 or O_2	7.5% < RA ≤ 10.0% or ±1.0% CO_2/O_2 [X]	RA ≤ 7.5% or ±0.7% CO_2/O_2 [X].
Hg [X]	N/A	RA < 20.0% or ± 1.0 μg/scm [X].
Moisture	7.5% <RA ≤10.0% or ±1.5% H_2O [X]	RA ≤7.5% or ±1.0% H_2O [X].

[W] The deadline for the next RATA is the end of the second (if semiannual) or fourth (if annual) successive QA operating quarter following the quarter in which the CEMS was last tested. Exclude calendar quarters with fewer than 168 unit operating hours (or, for common stacks and bypass stacks, exclude quarters with fewer than 168 stack operating hours) in determining the RATA deadline. For SO_2 monitors, QA operating quarters in which only very low sulfur fuel as defined in § 72.2, is combusted may also be excluded. However, the exclusion of calendar quarters is limited as follows: the deadline for the next RATA shall be no more than 8 calendar quarters after the quarter in which a RATA was last performed.

[X] The difference between monitor and reference method mean values applies to moisture monitors, CO_2, and O_2 monitors, low emitters of SO_2, NO_X, or Hg, or and low flow, only. The specifications for Hg monitors also apply to sorbent trap monitoring systems.

[Y] A NO_X concentration monitoring system used to determine NO_X mass emissions under § 75.71.

■ 42. Appendix D to Part 75 is amended by:

■ a. Revising section 2.1.5.1;

■ b. Removing all "±" symbols from paragraph (c) of section 2.1.6.1;

■ c. Revising the R_{base} and L_{avg} variable definitions in paragraph (a) of section 2.1.7.1;

■ d. Revising the terms "$(GHR)_{base}$" and "L_{avg}" in paragraph (c) of section 2.1.7.1;

■ e. Revising the terms "R_h" and "L_h" in paragraph (a) of section 2.1.7.2;

■ f. Revising the terms "$(GHR)_h$" and "L_h" in paragraph (c) of section 2.1.7.2;

■ g. Removing "D4177–82 (Reapproved 1990)" and adding in its place "D4177–95 (Reapproved 2000)", in the first sentence of section 2.2.3;

■ h. Removing "D4057–88 'Standard Practice for Manual Sampling of Petroleum and Petroleum Products' (incorporated by reference under § 75.6)" and adding in its place, "ASTM D4057–95 (Reapproved 2000), Standard Practice for Manual Sampling of Petroleum and Petroleum Products

(incorporated by reference under § 75.6 of this part)'', in sections 2.2.4.1 and 2.2.4.2, and in paragraph (c) of section 2.2.4.3;

■ i. Revising sections 2.2.5, 2.2.6, and 2.2.7;

■ j. Revising paragraphs (a)(2) and (e) of section 2.3.1.4;

■ k. Revising section 2.3.3.1.2;

■ l. Revising section 2.3.4;

■ m. Adding two sentences at the end of section 2.3.4.1;

■ n. Revising paragraphs (b)(2) and (c) of section 2.3.7;

■ o. Revising section 3.2.2; and

■ p. Revising section 3.5.1.

The revisions and additions read as follows:

Appendix D to Part 75—Optional SO_2 Emissions Data Protocol for Gas-Fired and Oil-Fired Units.

* * * * *

2. Procedure

* * * * *

2.1.5.1 Use the procedures in the following standards to verify flowmeter accuracy or design, as appropriate to the type of flowmeter: ASME MFC–3M–2004, Measurement of Fluid Flow in Pipes Using Orifice, Nozzle, and Venturi; ASME MFC–4M–1986 (Reaffirmed 1997), Measurement of Gas Flow by Turbine Meters; American Gas Association Report No. 3, Orifice Metering of Natural Gas and Other Related Hydrocarbon Fluids Part 1: General Equations and Uncertainty Guidelines (October 1990 Edition), Part 2: Specification and Installation Requirements (February 1991 Edition), and Part 3: Natural Gas Applications (August 1992 edition) (excluding the modified flow-calculation method in part 3); Section 8, Calibration from American Gas Association Transmission Measurement Committee Report No. 7: Measurement of Gas by Turbine Meters (Second Revision, April 1996); ASME–MFC–5M–1985, (Reaffirmed 1994), Measurement of Liquid Flow in Closed Conduits Using Transit-Time Ultrasonic Flowmeters; ASME MFC–6M–1998, Measurement of Fluid Flow in Pipes Using Vortex Flowmeters; ASME MFC–7M–1987 (Reaffirmed 1992), Measurement of Gas Flow by Means of Critical Flow Venturi Nozzles; ISO 8316: 1987(E) Measurement of Liquid Flow in Closed Conduits-Method by Collection of the Liquid in a Volumetric Tank; American Petroleum Institute (API) Manual of Petroleum Measurement Standards, Chapter 4—Proving Systems, Section 2—Pipe Provers (Provers Accumulating at Least 10,000 Pulses), Second Edition, March 2001, and Section 5—Master-Meter Provers, Second Edition, May 2000; American Petroleum Institute (API) Manual of Petroleum Measurement Standards, Chapter 22—Testing Protocol, Section 2—Differential Pressure Flow Measurement Devices, First Edition, August 2005; or ASME MFC–9M–1988 (Reaffirmed 2001), Measurement of Liquid Flow in Closed Conduits by Weighing Method, for all other flowmeter types (all incorporated by reference under § 75.6 of this part). The Administrator may also approve other procedures that use equipment traceable to National Institute of Standards and Technology standards. Document such procedures, the equipment used, and the accuracy of the procedures in the monitoring plan for the unit, and submit a petition signed by the designated representative under § 75.66(c). If the flowmeter accuracy exceeds 2.0 percent of the upper range value, the flowmeter does not qualify for use under this part.

* * * * *

2.1.7.1

(a) * * *

Where:

R_{base} = Value of the fuel flow rate-to-load ratio during the baseline period; 100 scfh/MWe, 100 scfh/klb per hour steam load, or 100 scfh/mmBtu per hour thermal output for gas-firing; (lb/hr)/MWe, (lb/hr)/klb per hour steam load, or (lb/hr)/mmBtu per hour thermal output for oil-firing.

* * * * *

L_{avg} = Arithmetic average unit load during the baseline period, megawatts, 1000 lb/hr of steam, or mmBtu/hr thermal output.

* * * * *

(c) * * *

Where:

$(GHR)_{base}$ = Baseline value of the gross heat rate during the baseline period, Btu/kwh, Btu/lb steam load, or 1000mmBtu heat input/mmBtu thermal output.

* * * * *

L_{avg} = Average (mean) unit load during the baseline period, megawatts, 1000 lb/hr of steam, or mmBtu/hr thermal output.

* * * * *

2.1.7.2

(a) * * *

Where:

R_h = Hourly value of the fuel flow rate-to-load ratio; 100 scfh/MWe, (lb/hr)/MWe, 100 scfh/1000 lb/hr of steam load, (lb/hr)/1000 lb/hr of steam load, 100 scfh/(mmBtu/hr of steam load), or (lb/hr)/(mmBtu/hr thermal output).

* * * * *

L_h = Hourly unit load, megawatts, 1000 lb/hr of steam, or mmBtu/hr thermal output.

* * * * *

(c) * * *

Where:

$(GHR)_h$ = Hourly value of the gross heat rate, Btu/kwh, Btu/lb steam load, or mmBtu heat input/mmBtu thermal output.

* * * * *

L_h = Hourly unit load, megawatts, 1000 lb/hr of steam, or mmBtu/hr thermal output.

* * * * *

2.2.5 For each oil sample that is taken on-site at the affected facility, split and label the sample and maintain a portion (at least 200 cc) of it throughout the calendar year and in all cases for not less than 90 calendar days after the end of the calendar year allowance accounting period. This requirement does not apply to oil samples taken from the fuel supplier's storage container, as described in section 2.2.4.3 of this appendix. Analyze oil samples for percent sulfur content by weight in accordance with ASTM D129–00, Standard Test Method for Sulfur in Petroleum Products (General Bomb Method), ASTM D1552–01, Standard Test Method for Sulfur in Petroleum Products (High-Temperature Method), ASTM D2622–98, Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-ray Fluorescence Spectrometry, ASTM D4294–98, Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectrometry, or ASTM D5453–06, Standard Test Method for Determination of Total Sulfur in Light Hydrocarbons, Spark Ignition Engine Fuel, Diesel Engine Fuel, and Engine Oil by Ultraviolet Fluorescence (all incorporated by reference under § 75.6 of this part). Alternatively, the oil samples may be analyzed for percent sulfur by any consensus standard method prescribed for the affected unit under part 60 of this chapter.

2.2.6 Where the flowmeter records volumetric flow rate rather than mass flow rate, analyze oil samples to determine the density or specific gravity of the oil. Determine the density or specific gravity of the oil sample in accordance with ASTM D287–92 (Reapproved 2000), Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products (Hydrometer Method), ASTM D1217–93 (Reapproved 1998), Standard Test Method for Density and Relative Density (Specific Gravity) of Liquids by Bingham Pycnometer, ASTM D1481–93 (Reapproved 1997), Standard Test Method for Density and Relative Density (Specific Gravity) of Viscous Materials by Lipkin Bicapillary Pycnometer, ASTM D1480–93 (Reapproved 1997), Standard Test Method for Density and Relative Density (Specific Gravity) of Viscous Materials by Bingham Pycnometer, ASTM D1298–99, Standard Test Method for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method, or ASTM D4052–96 (Reapproved 2002), Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter (all incorporated by reference under § 75.6 of this part). Alternatively, the oil samples may be analyzed for density or specific gravity by any consensus standard method prescribed for the affected unit under part 60 of this chapter.

2.2.7 Analyze oil samples to determine the heat content of the fuel. Determine oil heat content in accordance with ASTM D240–00, Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter, ASTM D4809–00, Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter (Precision Method), or ASTM D5865–01a, Standard Test Method for Gross Calorific Value of Coal and Coke (all incorporated by reference under § 75.6 of this part) or any other procedures listed in section 5.5 of appendix F of this part. Alternatively,

the oil samples may be analyzed for heat content by any consensus standard method prescribed for the affected unit under part 60 of this chapter.

* * * * *

2.3.1.4 * * *

(a) * * *

(2) Historical fuel sampling data for the previous 12 months, documenting the total sulfur content of the fuel and the GCV and/or percentage by volume of methane. The results of all sample analyses obtained by or provided to the owner or operator in the previous 12 months shall be used in the demonstration, and each sample result must meet the definition of pipeline natural gas in § 72.2 of this chapter, except where the results of at least 100 daily (or more frequent) total sulfur samples are provided by the fuel supplier. In that case you may opt to convert these data to monthly averages and then if, for each month, the average total sulfur content is 0.5 grains/100 scf or less, and if the GCV or percent methane requirement is also met, the fuel qualifies as pipeline natural gas. Alternatively, the fuel qualifies as pipeline natural gas if ≥ 98 percent of the 100 (or more) samples have a total sulfur content of 0.5 grains/100 scf or less and if the GCV or percent methane requirement is also met; or

* * * * *

(e) If a fuel qualifies as pipeline natural gas based on the specifications in a fuel contract or tariff sheet, no additional, on-going sampling of the fuel's total sulfur content is required, provided that the contract or tariff sheet is current, valid and representative of the fuel combusted in the unit. If the fuel qualifies as pipeline natural gas based on fuel sampling and analysis, on-going sampling of the fuel's sulfur content is required annually and whenever the fuel supply source changes. For the purposes of this paragraph (e), sampling ''annually'' means that at least one sample is taken in each calendar year. If the results of at least 100 daily (or more frequent) total sulfur samples have been provided by the fuel supplier since the last annual assessment of the fuel's sulfur content, the data may be used as follows to satisfy the annual sampling requirement for the current year. If this option is chosen, all of the data provided by the fuel supplier shall be used. First, convert the data to monthly averages. Then, if, for each month, the average total sulfur content is 0.5 grains/100 scf or less, and if the GCV or percent methane requirement is also met, the fuel qualifies as pipeline natural gas. Alternatively, the fuel qualifies as pipeline natural gas if the analysis of the 100 (or more) total sulfur samples since the last annual assessment shows that ≥ 98 percent of the samples have a total sulfur content of 0.5 grains/100 scf or less and if the GCV or percent methane requirement is also met. The effective date of the annual total sulfur sampling requirement is January 1, 2003.

* * * * *

2.3.3.1.2 Use one of the following methods when using manual sampling (as applicable to the type of gas combusted) to determine the sulfur content of the fuel: ASTM D1072–06, Standard Test Method for Total Sulfur in Fuel Gases by Combustion and Barium Chloride Titration, ASTM D4468–85 (Reapproved 2006), Standard Test Method for Total Sulfur in Gaseous Fuels by Hydrogenolysis and Rateometric Colorimetry, ASTM D5504–01, Standard Test Method for Determination of Sulfur Compounds in Natural Gas and Gaseous Fuels by Gas Chromatography and Chemiluminescence, ASTM D6667–04, Standard Test Method for Determination of Total Volatile Sulfur in Gaseous Hydrocarbons and Liquefied Petroleum Gases by Ultraviolet Fluorescence, or ASTM D3246–96, Standard Test Method for Sulfur in Petroleum Gas by Oxidative Microcoulometry, (all incorporated by reference under § 75.6 of this part). Alternatively, the gas samples may be analyzed for percent sulfur by any consensus standard method prescribed for the affected unit under part 60 of this chapter.

* * * * *

2.3.4 Gross Calorific Values for Gaseous Fuels

Determine the GCV of each gaseous fuel at the frequency specified in this section, using one of the following methods: ASTM D1826–94 (Reapproved 1998), ASTM D3588–98, ASTM D4891–89 (Reapproved 2006), GPA Standard 2172–96, Calculation of Gross Heating Value, Relative Density and Compressibility Factor for Natural Gas Mixtures from Compositional Analysis, or GPA Standard 2261–00, Analysis for Natural Gas and Similar Gaseous Mixtures by Gas Chromatography (all incorporated by reference under § 75.6 of this part). Use the appropriate GCV value, as specified in section 2.3.4.1, 2.3.4.2, or 2.3.4.3 of this appendix, in the calculation of unit hourly heat input rates. Alternatively, the gas samples may be analyzed for heat content by any consensus standard method prescribed for the affected unit under part 60 of this chapter.

2.3.4.1 GCV of Pipeline Natural Gas

* * * If multiple GCV samples are taken and analyzed in a particular month, the GCV values from all samples shall be averaged arithmetically to obtain the monthly GCV. Then, apply the monthly average GCV value as described in paragraph (c) in section 2.3.7 of this appendix.

* * * * *

2.3.7 * * *

(b) * * *

(2) For natural gas, if only one sample is taken, apply the results beginning at the date on which the sample was taken. If multiple samples are taken and averaged, apply the results beginning at the date on which the last sample used in the annual assessment was taken;

* * * * *

(c) For monthly samples of the fuel GCV:

(1) If the actual monthly value is to be used in the calculations and only one sample is taken, apply the results starting from the date on which the sample was taken. If multiple samples are taken and averaged, apply the monthly average GCV value to the entire month; or

(2) If an assumed value (contract maximum or highest value from previous year's samples) is to be used in the calculations, apply the assumed value to all hours in each month of the quarter unless a higher value is obtained in a monthly GCV sample (or, if multiple samples are taken and averaged, if the monthly average exceeds the assumed value). In that case, if only one monthly sample is taken, use the sampled value, starting from the date on which the sample was taken. If multiple samples are taken and averaged, use the average value for the entire month in which the assumed value was exceeded. Consider the sample (or, if applicable, monthly average) results to be the new assumed value. Continue using the new assumed value unless and until one of the following occurs (as applicable to the reporting option selected): The assumed value is superseded by a higher value from a subsequent monthly sample (or by a higher monthly average); or the assumed value is superseded by a new contract in which case the new contract value becomes the assumed value at the time the fuel specified under the new contract begins to be combusted in the unit; or both the calendar year in which the new sampled value (or monthly average) exceeded the assumed value and the subsequent calendar year have elapsed.

* * * * *

3.2.2 Convert density, specific gravity, or API gravity of the oil sample to density of the oil sample at the sampling location's temperature using ASTM D1250–07, Standard Guide for Use of the Petroleum Measurement Tables (incorporated by reference under (§ 75.6 of this part).

* * * * *

3.5.1 Hourly SO_2 Mass Emissions from the Combustion of all Fuels. Determine the total mass emissions for each hour from the combustion of all fuels using Equation D–12 (On and after January 1, 2009, determine the total mass emission rate (in lbs/hr) for each hour from the combustion of all fuels by dividing Equation D–12 by the actual unit operating time for the hour):

$$M_{So2-hr} = \sum_{all-fuels} SO2_{rate-1}\, t_i \qquad \text{(Eq. D-12)}$$

Where:

MSO_2-hr = Total mass of SO_2 emissions from all fuels combusted during the hour, lb.

SO_2 rate − I = SO_2 mass emission rate for each type of gas or oil fuel combusted during the hour, lb/hr.

ti = Time each gas or oil fuel was combusted for the hour (fuel usage time), fraction of an hour (in equal increments that can

range from one hundredth to one quarter of an hour, at the option of the owner or operator).

* * * * *

■ 43. Appendix E to part 75 is amended by:

■ a. Adding a new sentence to the end of section 2.1;

■ b. Revising the seventh sentence of section 2.1.2.1;

■ c. Revising sections 2.1.2.2 and 2.1.2.3;

■ d. Removing the phrase ''(MWge or steam load in 1000 lb/hr)'' and adding in its place the phrase ''(MWge or steam load in 1000 lb/hr, or mmBtu/hr thermal output)'', in section 2.4.1;

■ e. Revising section 2.5.2; and

■ f. Adding section 2.5.2.4.

The revisions and additions read as follows:

Appendix E to Part 75—Optional NO_X Emissions Estimation Protocol for Gas-Fired Peaking Units and Oil-Fired Peaking Units

* * * * *

2.1 *Initial Performance Testing*

* * * The requirements in section 6.1.2 of appendix A to this part shall be met by any Air Emissions Testing Body (AETB) performing O_2 and NO_X concentration measurements under this appendix, either for units using the excepted methodology in this appendix or for units using the low mass emissions excepted methodology in § 75.19.

* * * * *

2.1.2.1 * * * Use a minimum of 12 sample points, located according to Method 1 in appendix A–1 to part 60 of this chapter.

* * * * *

2.1.2.2 For stationary gas turbines, sample at a minimum of 12 points per run at each load level. Locate the sample points according to Method 1 in appendix A–1 to part 60 of this chapter. For each fuel or consistent combination of fuels (and, optionally, for each combination of fuels), measure the NO_X and O_2 concentrations at each sampling point using methods 7E and 3A in appendices A–4 and A–2 to part 60 of this chapter. For diesel or dual fuel reciprocating engines, select the sampling site to be as close as practicable to the exhaust of the engine.

2.1.2.3 Allow the unit to stabilize for a minimum of 15 minutes (or longer if needed for the NO_X and O_2 readings to stabilize) prior to commencing NO_X, O_2, and heat input measurements. Determine the measurement system response time according to sections 8.2.5 and 8.2.6 of method 7E in appendix A–4 to part 60 of this chapter. When inserting the probe into the flue gas for the first sampling point in each traverse, sample for at least one minute plus twice the measurement system response time (or longer, if necessary to obtain a stable reading). For all other sampling points in each traverse, sample for at least one minute plus the measurement system response time (or longer, if necessary to obtain a stable reading). Perform three test runs at each load condition and obtain an arithmetic average of the runs for each load condition. During each test run on a boiler, record the boiler excess oxygen level at 5 minute intervals.

* * * * *

2.5.2 Substitute missing NO_X emission rate data using the highest NO_X emission rate tabulated during the most recent set of baseline correlation tests for the same fuel or, if applicable, combination of fuels, except as provided in sections 2.5.2.1, 2.5.2.2, 2.5.2.3, and 2.5.2.4 of this appendix.

* * * * *

2.5.2.4 Whenever 20 full calendar quarters have elapsed following the quarter of the last baseline correlation test for a particular type of fuel (or fuel mixture), without a subsequent baseline correlation test being done for that type of fuel (or fuel mixture), substitute the fuel-specific NO_X MER (as defined in § 72.2 of this chapter) for each hour in which that fuel (or mixture) is combusted until a new baseline correlation test for that fuel (or mixture) has been successfully completed. For fuel mixtures, report the highest of the individual MER values for the components of the mixture.

* * * * *

■ 44. Appendix F to Part 75 is amended by:

■ a. Removing the second and third sentences from the introductory text of section 2;

■ b. Removing the phrase ''method 19 in appendix A of part 60 of this chapter'' and adding in its place the phrase ''Method 19 in appendix A–7 to part 60 of this chapter'', in the last sentence of section 3.1 and in the last sentence of section 3.2;

■ c. Adding the phrase '', or (if applicable) in the equations in Method 19 in appendix A–7 to part 60 of this chapter'' after the words ''of this appendix'', in section 3.3;

■ d. Removing the second and third sentences from section 3.3.4;

■ e. Adding sections 3.3.4.1 and 3.3.4.2;

■ f. Revising Table 1;

■ g. Revising the text preceding Equation F–7a, in section 3.3.6;

■ h. Revising section 3.3.6.1;

■ i. Revising section 3.3.6.2;

■ j. Revising sections 3.3.6.3 and 3.3.6.4;

■ k. Adding section 3.3.6.5;

■ l. Adding the words ''either measured directly with a CO_2 monitor or calculated from wet-basis O_2 data using Equation F–14b,'' after the words ''wet basis,'' in the first sentence of the C_h variable definition, and by removing the second and third sentences from the C_h variable definition, in section 4.1;

■ m. Revising section 4.4.1;

■ n. Removing the second and third sentences from the $\%CO_{2w}$ variable definition in 5.2.1;

■ o. Removing the second and third sentences from the $\%CO_{2d}$ variable definition in 5.2.2;

■ p. Removing the second and third sentences from the $\%O_{2w}$ variable definition, and by adding a new sentence at the end of the paragraph, in section 5.2.3;

■ q. Removing the second and third sentences from the $\%O_{2d}$ variable definition, in section 5.2.4;

■ r. Revising the definition of ''GCV_o'' in paragraph (a) of section 5.5.1;

■ s. Revising the definition of ''GCV_g'' in section 5.5.2;

■ t. Revising section 5.5.3.1;

■ u. Revising section 5.5.3.2;

■ v. Removing the phrase ''as measured by ASTM D3176–89, D1989–92, D3286–91a, or D2015–91, Btu/lb'' and adding in its place the phrase ''as measured by ASTM D3176–89 (Reapproved 2002), or ASTM D5865–01a, Btu/lb. (incorporated by reference under § 75.6 of this part).'' in the definition of the GCV_c variable in Equation F–21;

■ w. Removing the word ''lb/hr'' and adding in its place the phrase ''lb/hr, or mmBtu/hr'' in the definition of the SF variable in Equation F–21b;

■ x. Revising the heading and text of section 7;

■ y. Adding the words ''of this appendix'' after the words ''section 8.1, 8.2, or 8.3'' and after the words ''section 8.4'' in the introductory text for section 8;

■ z. Revising sections 8.1 and 8.1.1;

■ aa. Revising section 8.2;

■ bb. Adding sections 8.2.1 and 8.2.2;

■ cc. Revising section 8.3;

■ dd. Revising section 8.4; and

■ ee. Adding section 10.

The revisions and additions read as follows:

Appendix F to Part 75—Conversion Procedures.

* * * * *

3.3.4 * * *

3.3.4.1 For boilers, a minimum concentration of 5.0 percent CO_2 or a maximum concentration of 14.0 percent O_2 may be substituted for the measured diluent gas concentration value for any operating hour in which the hourly average CO_2 concentration is < 5.0 percent CO_2 or the hourly average O_2 concentration is > 14.0 percent O_2. For stationary gas turbines, a minimum concentration of 1.0 percent CO_2 or a maximum concentration of 19.0 percent O_2 may be substituted for measured diluent gas concentration values for any operating hour in which the hourly average CO_2 concentration is < 1.0 percent CO_2 or the hourly average O_2 concentration is > 19.0 percent O_2.

3.3.4.2 If NO_X emission rate is calculated using either Equation 19–3 or 19–5 in Method 19 in appendix A–7 to part 60 of this chapter, a variant of the equation shall be used whenever the diluent cap is applied. The modified equations shall be designated as Equations 19–3D and 19–5D, respectively.

Equation 19–3D is structurally the same as Equation 19–3, except that the term ''$\%O_{2w}$'' in the denominator is replaced with the term ''$\%O_{2dc} \times [(100 - \% H_2O)/100]$'', where $\%O_{2dc}$ is the diluent cap value. The numerator of Equation 19–5D is the same as Equation 19–5; however, the denominator of Equation 19–5D is simply ''$20.9 - \%O_{2dc}$'', where $\%O_{2dc}$ is the diluent cap value.

* * * * *

TABLE 1.—F- AND F_c-FACTORS [1]

Fuel	F-factor (dscf/mmBtu)	F_C-factor (scf CO_2/mmBtu)
Coal (as defined by ASTM D388–99 [2]):		
Anthracite	10,100	1,970
Bituminous	9,780	1,800
Subbituminous	9,820	1,840
Lignite	9,860	1,910
Petroleum Coke	9,830	1,850
Tire Derived Fuel	10,260	1,800
Oil	9,190	1,420
Gas:		
Natural gas	8,710	1,040
Propane	8,710	1,190
Butane	8,710	1,250
Wood:		
Bark	9,600	1,920
Wood residue	9,240	1,830

[1] Determined at standard conditions: 20 °C (68 °F) and 29.92 inches of mercury.
[2] Incorporated by reference under § 75.6 of this part.

* * * * *

3.3.6 Equations F–7a and F–7b may be used in lieu of the F or F_c factors specified in Section 3.3.5 of this appendix to calculate a site-specific dry-basis F factor (dscf/mmBtu) or a site-specific F_c factor (scf CO_2/mmBtu), on either a dry or wet basis. At a minimum, the site-specific F or F_c factor must be based on 9 samples of the fuel. Fuel samples taken during each run of a RATA are acceptable for this purpose. The site-specific F or F_c factor must be re-determined at least annually, and the value from the most recent determination must be used in the emission calculations. Alternatively, the previous F or F_c value may continue to be used if it is higher than the value obtained in the most recent determination. The owner or operator shall keep records of all site-specific F or F_c determinations, active for at least 3 years. (Calculate all F- and F_c factors at standard conditions of 20 °C (68 °F) and 29.92 inches of mercury).

* * * * *

3.3.6.1 H, C, S, N, and O are content by weight of hydrogen, carbon, sulfur, nitrogen, and oxygen (expressed as percent), respectively, as determined on the same basis as the gross calorific value (GCV) by ultimate analysis of the fuel combusted using ASTM D3176–89 (Reapproved 2002), Standard Practice for Ultimate Analysis of Coal and Coke, (solid fuels), ASTM D5291–02, Standard Test Methods for Instrumental Determination of Carbon, Hydrogen, and Nitrogen in Petroleum Products and Lubricants, (liquid fuels) or computed from results using ASTM D1945–96 (Reapproved 2001), Standard Test Method for Analysis of Natural Gas by Gas Chromatography, or ASTM D1946–90 (Reapproved 2006), Standard Practice for Analysis of Reformed Gas by Gas Chromatography, (gaseous fuels) as applicable. (All of these methods are incorporated by reference under § 75.6 of this part.)

3.3.6.2 GCV is the gross calorific value (Btu/lb) of the fuel combusted determined by ASTM D5865–01a, Standard Test Method for Gross Calorific Value of Coal and Coke, and ASTM D240–00, Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter, or ASTM D4809–00, Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter (Precision Method) for oil; and ASTM D3588–98, Standard Practice for Calculating Heat Value, Compressibility Factor, and Relative Density of Gaseous Fuels, ASTM D4891–89 (Reapproved 2006), Standard Test Method for Heating Value of Gases in Natural Gas Range by Stoichiometric Combustion, GPA Standard 2172–96 Calculation of Gross Heating Value, Relative Density and Compressibility Factor for Natural Gas Mixtures from Compositional Analysis, GPA Standard 2261–00 Analysis for Natural Gas and Similar Gaseous Mixtures by Gas Chromatography, or ASTM D1826–94 (Reapproved 1998), Standard Test Method for Calorific (Heating) Value of Gases in Natural Gas Range by Continuous Recording Calorimeter, for gaseous fuels, as applicable. (All of these methods are incorporated by reference under § 75.6 of this part).

3.3.6.3 For affected units that combust a combination of a fuel (or fuels) listed in Table 1 in section 3.3.5 of this appendix with any fuel(s) not listed in Table 1, the F or F_c value is subject to the Administrator's approval under § 75.66.

3.3.6.4 For affected units that combust combinations of fuels listed in Table 1 in section 3.3.5 of this appendix, prorate the F or F_c factors determined by section 3.3.5 or 3.3.6 of this appendix in accordance with the applicable formula as follows:

$$F = \sum_{i=1}^{n} X_i F_i \qquad F_c = \sum_{i=1}^{n} X_i (F_c)_i$$

Where,

X_i = Fraction of total heat input derived from each type of fuel (*e.g.*, natural gas, bituminous coal, wood). Each X_i value shall be determined from the best available information on the quantity of fuel combusted and the GCV value, over a specified time period. The owner or operator shall explain the method used to calculate X_i in the hardcopy portion of the monitoring plan for the unit. The X_i values may be determined and updated either hourly, daily, weekly, or monthly. In all cases, the prorated F-factor used in the emission calculations shall be determined using the X_i values from the most recent update.

F_i or $(F_c)_i$ = Applicable F or Fc factor for each fuel type determined in accordance with Section 3.3.5 or 3.3.6 of this appendix.

n = Number of fuels being combusted in combination.

3.3.6.5 As an alternative to prorating the F or Fc factor as described in section 3.3.6.4 of this appendix, a ''worst-case'' F or F_c factor may be reported for any unit operating hour.

The worst-case F or F_c factor shall be the highest F or F_c value for any of the fuels combusted in the unit.

* * * * *

4. Procedure for CO_2 Mass Emissions

* * * * *

4.4.1 If the owner or operator elects to use data from an O_2 monitor to calculate CO_2 concentration, the appropriate F and F_C factors from section 3.3.5 of this appendix shall be used in one of the following equations (as applicable) to determine hourly average CO_2 concentration of flue gases (in percent by volume) from the measured hourly average O_2 concentration:

$$CO_{2d} = 100 \frac{F_c}{F} \frac{20.9 - O_{2d}}{20.9} \qquad \text{(Eq. F-14a)}$$

Where:

CO_{2d} = Hourly average CO_2 concentration during unit operation, percent by volume, dry basis.

F, F_C = F-factor or carbon-based F_c-factor from section 3.3.5 of this appendix.

20.9 = Percentage of O_2 in ambient air.

O_{2d} = Hourly average O_2 concentration during unit operation, percent by volume, dry basis.

$$CO_{2w} = \frac{100}{20.9} \frac{F_c}{F} \left[20.9 \left(\frac{100 - \%H_2O}{100} \right) - O_{2w} \right] \qquad \text{(Eq. F-14b)}$$

Where:

CO_{2w} = Hourly average CO_2 concentration during unit operation, percent by volume, wet basis.

O_{2w} = Hourly average O_2 concentration during unit operation, percent by volume, wet basis.

F, F_c = F-factor or carbon-based FC-factor from section 3.3.5 of this appendix.

20.9 = Percentage of O_2 in ambient air.

$\%H_2O$ = Moisture content of gas in the stack, percent.

For any hour where Equation F–14a or F–14b results in a negative hourly average CO_2 value, 0.0% CO_{2w} shall be recorded as the average CO_2 value for that hour.

* * * * *

5. Procedures for Heat Input

* * * * *

5.2.3 * * * For any operating hour where Equation F–17 results in an hourly heat input rate that is ≤ 0.0 mmBtu/hr, 1.0 mmBtu/hr shall be recorded and reported as the heat input rate for that hour.

* * * * *

5.5.1 (a) * * *

GCV_o = Gross calorific value of oil, as measured by ASTM D240–00, ASTM D5865–01a, or ASTM D4809–00 for each oil sample under section 2.2 of appendix D to this part, Btu/unit mass (all incorporated by reference under (§ 75.6 of this part).

* * * * *

5.5.2 * * *

GCV_g = Gross calorific value of gaseous fuel, as determined by sampling (for each delivery for gaseous fuel in lots, for each daily gas sample for gaseous fuel delivered by pipeline, for each hourly average for gas measured hourly with a gas chromatograph, or for each monthly sample of pipeline natural gas, or as verified by the contractual supplier at least once every month pipeline natural gas is combusted, as specified in section 2.3 of appendix D to this part) using ASTM D1826–94 (Reapproved 1998), ASTM D3588–98, ASTM D4891–89 (Reapproved 2006), GPA Standard 2172–96 Calculation of Gross Heating Value, Relative Density and Compressibility Factor for Natural Gas Mixtures from Compositional Analysis, or GPA Standard 2261–00 Analysis for Natural Gas and Similar Gaseous Mixtures by Gas Chromatography, Btu/100 scf (all incorporated by reference under § 75.6 of this part).

* * * * *

5.5.3.1 Perform coal sampling daily according to section 5.3.2.2 in Method 19 in appendix A to part 60 of this chapter and use ASTM D2234–00, Standard Practice for Collection of a Gross Sample of Coal, (incorporated by reference under § 75.6 of this part) Type I, Conditions A, B, or C and systematic spacing for sampling. (When performing coal sampling solely for the purposes of the missing data procedures in § 75.36, use of ASTM D2234–00 is optional, and coal samples may be taken weekly.)

5.5.3.2 All ASTM methods are incorporated by reference under § 75.6 of this part. Use ASTM D2013–01, Standard Practice for Preparing Coal Samples for Analysis, for preparation of a daily coal sample and analyze each daily coal sample for gross calorific value using ASTM D5865–01a, Standard Test Method for Gross Calorific Value of Coal and Coke. On-line coal analysis may also be used if the on-line analytical instrument has been demonstrated to be equivalent to the applicable ASTM methods under §§ 75.23 and 75.66.

* * * * *

7. Procedures for SO_2 Mass Emissions, Using Default SO_2 Emission Rates and Heat Input Measured by CEMS

The owner or operator shall use Equation F–23 to calculate hourly SO_2 mass emissions in accordance with § 75.11(e)(1) during the combustion of gaseous fuel, for a unit that uses a flow monitor and a diluent gas monitor to measure heat input, and that qualifies to use a default SO_2 emission rate under section 2.3.1.1, 2.3.2.1.1, or 2.3.6(b) of appendix D to this part. Equation F–23 may also be applied to the combustion of solid or liquid fuel that meets the definition of very low sulfur fuel in § 72.2 of this chapter, combinations of such fuels, or mixtures of such fuels with gaseous fuel, if the owner or operator has received approval from the Administrator under § 75.66 to use a site-specific default SO_2 emission rate for the fuel or mixture of fuels.

$$E_h = (ER)(HI) \qquad \text{(Eq. F-23)}$$

Where:

E_h = Hourly SO_2 mass emission rate, lb/hr.

ER = Applicable SO_2 default emission rate for gaseous fuel combustion, from section 2.3.1.1, 2.3.2.1.1, or 2.3.6(b) of appendix D to this part, or other default SO_2 emission rate for the combustion of very low sulfur liquid or solid fuel, combinations of such fuels, or mixtures of such fuels with gaseous fuel, as approved by the Administrator under § 75.66, lb/mmBtu.

HI = Hourly heat input rate, determined using the procedures in section 5.2 of this appendix, mmBtu/hr.

8. Procedures for NO_X Mass Emissions

* * * * *

8.1 The own or operator may use the hourly NO_X emission rate and the hourly heat input rate to calculate the NO_X mass emissions in pounds or the NO_X mass emission rate in pounds per hour, (as required by the applicable reporting format), for each unit or stack operating hour, as follows:

8.1.1 If both NO_X emission rate and heat input rate are monitored at the same unit or stack level (e.g., the NO_X emission rate value and the heat input rate value both represent all of the units exhausting to the common stack), then (as required by the applicable reporting format) either:

(a) Use Equation F–24 to calculate the hourly NO_X mass emissions (lb).

$$M_{(NOx)_h} = ER_{(NOx)_h} HI_h t_h \qquad \text{(Eq. F-24)}$$

Where:

$M_{(NO_X)_h}$ = NO_X mass emissions in lbs for the hour.

$ER_{(NO_X)_h}$ = Hourly average NO_X emission rate for hour h, lb/mmBtu, from section 3 of this appendix, from Method 19 in

appendix A–7 to part 60 of this chapter, or from section 3.3 of appendix E to this part. (Include bias-adjusted NO_X emission rate values, where the bias-test procedures in appendix A to this part shows a bias-adjustment factor is necessary.)

HI_h = Hourly average heat input rate for hour h, mmBtu/hr. (Include bias-adjusted flow rate values, where the bias-test procedures in appendix A to this part shows a bias-adjustment factor is necessary.)

t_h = Monitoring location operating time for hour h, in hours or fraction of an hour (in equal increments that can range from one hundredth to one quarter of an hour, at the option of the owner or operator). If the combined NO_X emission rate and heat input are monitored for all of the units in a common stack, the monitoring location operating time is equal to the total time when any of those units was exhausting through the common stack; or

(b) Use Equation F–24a to calculate the hourly NO_X mass emission rate (lb/hr).

$$E_{(NOx)_h} = ER_{(NOx)_h} HI_h \qquad \text{(Eq. F-24a)}$$

Where:

$E_{(NOx)h}$ = NO_X mass emissions rate in lbs/hr for the hour.

$ER_{(NOx)h}$ = Hourly average NO_X emission rate for hour h, lb/mmBtu, from section 3 of this appendix, from Method 19 in appendix A–7 to part 60 of this chapter, or from section 3.3 of appendix E to this part. (Include bias-adjusted NO_X emission rate values, where the bias-test procedures in appendix A to this part shows a bias-adjustment factor is necessary.)

HI_h = Hourly average heat input rate for hour h, mmBtu/hr. (Include bias-adjusted flow rate values, where the bias-test procedures in appendix A to this part shows a bias-adjustment factor is necessary.)

* * * * *

8.2 Alternatively, the owner or operator may use the hourly NO_X concentration (as measured by a NO_X concentration monitoring system) and the hourly stack gas volumetric flow rate to calculate the NO_X mass emission rate (lb/hr) for each unit or stack operating hour, in accordance with section 8.2.1 or 8.2.2 of this appendix (as applicable). If the hourly NO_X mass emissions are to be reported in lb, Equation F–26c in section 8.3 of this appendix shall be used to convert the hourly NO_X mass emission rates to hourly NO_X mass emissions (lb).

8.2.1 When the NO_X concentration monitoring system measures on a wet basis, first calculate the hourly NO_X mass emission rate (in lb/hr) during unit (or stack) operation, using Equation F–26a. (Include bias-adjusted flow rate or NO_X concentration values, where the bias-test procedures in appendix A to this part shows a bias-adjustment factor is necessary.)

$$E_{(NOx)_h} = K\ C_{hw} Q_h \qquad \text{(Eq. F-26a)}$$

Where:

$E_{(NOx)h}$ = NO_X mass emissions rate in lb/hr.

K = 1.194 x 10^{-7} for NO_X, (lb/scf)/ppm.

C_{hw} = Hourly average NO_X concentration during unit operation, wet basis, ppm.

Q_h = Hourly average volumetric flow rate during unit operation, wet basis, scfh.

8.2.2 When NO_X mass emissions are determined using a dry basis NO_X concentration monitoring system and a wet basis flow monitoring system, first calculate hourly NO_X mass emission rate (in lb/hr) during unit (or stack) operation, using Equation F–26b. (Include bias-adjusted flow rate or NO_X concentration values, where the bias-test procedures in appendix A to this part shows a bias-adjustment factor is necessary.)

$$E_{(NO_X)_h} = K\ C_{hd} Q_h \frac{(100 - \%H_2O)}{(100)} \qquad \text{(Eq. F-26b)}$$

Where:

$E_{(NOx)h}$ = NO_X mass emissions rate, lb/hr.

K = 1.194 x 10^{-7} for NO_X, (lb/scf)/ppm.

C_{hd} = Hourly average NO_X concentration during unit operation, dry basis, ppm.

Q_h = Hourly average volumetric flow rate during unit operation, wet basis, scfh.

$\%H_2O$ = Hourly average stack moisture content during unit operation, percent by volume.

8.3 When hourly NO_X mass emissions are reported in pounds and are determined using a NO_X concentration monitoring system and a flow monitoring system, calculate NO_X mass emissions (lb) for each unit or stack operating hour by multiplying the hourly NO_X mass emission rate (lb/hr) by the unit operating time for the hour, as follows:

$$M_{(NO_X)_h} = E_h t_h \qquad \text{(Eq. F-26c)}$$

Where:

$M_{(NOx)h}$ = NO_X mass emissions for the hour, lb.

E_h = Hourly NO_X mass emission rate during unit (or stack) operation from Equation F–26a in section 8.2.1 of this appendix or Equation F–26b in section 8.2.2 of this appendix (as applicable), lb/hr.

t_h = Unit operating time or stack operating time (as defined in § 72.2 of this chapter) for hour ''h'', in hours or fraction of an hour (in equal increments that can range from one hundredth to one quarter of an hour, at the option of the owner or operator).

8.4 Use the following procedures to calculate quarterly, cumulative ozone season, and cumulative yearly NO_X mass emissions, in tons:

(a) When hourly NO_X mass emissions are reported in lb., use Eq. F–27.

$$M_{(NO_X)_{time\ period}} = \frac{\sum_{h=1}^{p} M(NO_X)_h}{2000} \qquad \text{(Eq. F-27)}$$

Where:

$M_{(NOx)time\ period}$ = NO_X mass emissions in tons for the given time period (quarter, cumulative ozone season, cumulative year-to-date).

$M_{(NOx)h}$ = NO_X mass emissions in lb for the hour.

p = The number of hours in the given time period (quarter, cumulative ozone season, cumulative year-to-date).

(b) When hourly NO_X mass emission rate is reported in lb/hr, use Eq. F–27a.

$$M_{(NO_X)_{time\ period}} = \frac{\sum_{h=1}^{p} E_{(NO_X)_h} t_h}{2000} \qquad \text{(Eq. F-27a)}$$

Where:

$M_{(NO_X)_{time\ period}}$ = NO_X mass emissions in tons for the given time period (quarter, cumulative ozone season, cumulative year-to-date).

$E_{(NO_X)_h}$ = NO_X mass emission rate in lb/hr for the hour.

p = The number of hours in the given time period (quarter, cumulative ozone season, cumulative year-to-date).

t_h = Monitoring location operating time for hour h, in hours or fraction of an hour (in equal increments that can range from one hundredth to one quarter of an hour, at the option of the owner or operator).

* * * * *

10. Moisture Determination From Wet and Dry O_2 Readings

If a correction for the stack gas moisture content is required in any of the emissions or heat input calculations described in this appendix, and if the hourly moisture content is determined from wet- and dry-basis O_2 readings, use Equation F–31 to calculate the percent moisture, unless a ''K'' factor or other mathematical algorithm is developed as described in section 6.5.7(a) of appendix A to this part:

$$\%H_2O = \frac{(O_{2d} - O_{2w})}{O_{2d}} \times 100 \qquad \text{(Eq. F-31)}$$

Where:

% H_2O = Hourly average stack gas moisture content, percent H_2O

O_{2d} = Dry-basis hourly average oxygen concentration, percent O_2

O_{2w} = Wet-basis hourly average oxygen concentration, percent O_2

■ 45. Appendix G to Part 75 is amended by:

■ a. Revising section 2.1.2;

■ b. Removing ''D3174–89 'Standard Test Method for Ash in the Analysis Sample of Coal and Coke From Coal' '' and by adding in its place, ''D3174–00, Standard Test Method for Ash in the Analysis Sample of Coal and Coke from Coal'' in section 2.2.1; and

■ c. Removing ''D3178–89 (1997), 'Standard Test Methods for Carbon and Hydrogen in the Analysis Sample of Coal and Coke' '' and adding in its place ''D5373–02 (Reapproved 2007), Standard Test Methods for Instrumental Determination of Carbon, Hydrogen, and Nitrogen in Laboratory Samples of Coal and Coke'' in section 2.2.2.

The revisions read as follows:

Appendix G to Part 75—Determination of CO_2 Emissions.

* * * * *

2.1.2 Determine the carbon content of each fuel sample using one of the following methods: ASTM D3178–89 (Reapproved 2002) or ASTM D5373–02 (Reapproved 2007) for coal; ASTM D5291–02, Standard Test Methods for Instrumental Determination of Carbon, Hydrogen, and Nitrogen in Petroleum Products and Lubricants, ultimate analysis of oil, or computations based upon ASTM D3238–95 (Reapproved 2000) and either ASTM D2502–92 (Reapproved 1996) or ASTM D2503–92 (Reapproved 1997) for oil; and computations based on ASTM D1945–96 (Reapproved 2001) or ASTM D1946–90 (Reapproved 2006) for gas (all incorporated by reference under § 75.6 of this part).

* * * * *

■ 46. Appendix K to Part 75 is amended by:

■ a. Removing the words ''(see §§ 75.11(b) and 75.12(b))'' and adding in its place the words ''(see § 75.11(b))'' in section 5;

■ b. Adding a sentence to the end of section 7.2.3;

■ c. Removing the words ''or § 75.12(b)'' and ''or § 75.12,'' from section 7.2.4;

■ d. Revising Table K–1 of section 8; and

■ e. Adding the words ''or in Table K–1'' following the words ''§ 75.15(h)'' in the second sentence of section 11.8.

The revisions and additions read as follows:

Appendix K to Part 75—Quality Assurance and Operating Procedures for Sorbent Trap Monitoring Systems

* * * * *

7.2.3 * * * The sample flow rate through a sorbent trap monitoring system during any hour (or portion of an hour) in which the unit is not operating shall be zero.

* * * * *

TABLE K–1.—QUALITY ASSURANCE/QUALITY CONTROL CRITERIA FOR SORBENT TRAP MONITORING SYSTEMS

QA/QC test or specification	Acceptance criteria	Frequency	Consequences if not met
Pre-test leak check	≤4% of target sampling rate	Prior to sampling	Sampling shall not commence until the leak check is passed.
Post-test leak check	≤4% of average sampling rate	After sampling	** See *Note*, below.
Ratio of stack gas flow rate to sample flow rate.	No more than 5% of the hourly ratios or 5 hourly ratios (whichever is less restrictive) may deviate from the reference ratio by more than ± 25%.	Every hour throughout data collection period.	** See *Note*, below.
Sorbent trap section 2 breakthrough.	≤5% of Section 1 Hg mass	Every sample	** See *Note*, below.
Paired sorbent trap agreement	≤10% Relative Deviation (RD) if the average concentration is > 1.0 μg/m³. ≤ 20% RD if the average concentration is ≤ 1.0 μg/m³. Results are also acceptable if absolute difference between concentrations from paired traps is ≤ 0.03 μg/m³.	Every sample	Either invalidate the data from the paired traps or report the results from the trap with the higher Hg concentration.
Spike Recovery Study	Average recovery between 85% and 115% for each of the 3 spike concentration levels.	Prior to analyzing field samples and prior to use of new sorbent media.	Field samples shall not be analyzed until the percent recovery criteria has been met
Multipoint analyzer calibration	Each analyzer reading within ± 10% of true value and $r^2 \geq 0.99$.	On the day of analysis, before analyzing any samples.	Recalibrate until successful.

TABLE K–1.—QUALITY ASSURANCE/QUALITY CONTROL CRITERIA FOR SORBENT TRAP MONITORING SYSTEMS—Continued

QA/QC test or specification	Acceptance criteria	Frequency	Consequences if not met
Analysis of independent calibration standard.	Within ± 10% of true value	Following daily calibration, prior to analyzing field samples.	Recalibrate and repeat independent standard analysis until successful.
Spike recovery from section 3 of sorbent trap.	75–125% of spike amount	Every sample	** See *Note*, below.
RATA	RA ≤ 20.0% *or* Mean difference ≤ 1.0 μg/dscm for low emitters.	For initial certification and annually thereafter.	Data from the system are invalidated until a RATA is passed.
Gas flow meter calibration	Calibration factor (Y) within ± 5% of average value from the most recent 3-point calibration.	At three settings prior to initial use and at least quarterly at one setting thereafter. For mass flow meters, initial calibration with stack gas is required.	Recalibrate the meter at three orifice settings to determine a new value of Y.
Temperature sensor calibration	Absolute temperature measured by sensor within ± 1.5% of a reference sensor.	Prior to initial use and at least quarterly thereafter.	Recalibrate. Sensor may not be used until specification is met.
Barometer calibration	Absolute pressure measured by instrument within ± 10 mm Hg of reading with a mercury barometer.	Prior to initial use and at least quarterly thereafter.	Recalibrate. Instrument may not be used until specification is met.

** Note: If both traps fail to meet the acceptance criteria, the data from the pair of traps are invalidated. However, if only one of the paired traps fails to meet this particular acceptance criterion and the other sample meets all of the applicable QA criteria, the results of the valid trap may be used for reporting under this part, provided that the measured Hg concentration is multiplied by a factor of 1.111. When the data from both traps are invalidated and quality-assured data from a certified backup monitoring system, reference method, or approved alternative monitoring system are unavailable, missing data substitution must be used.

* * * * *

[FR Doc. E7–25071 Filed 1–23–08; 8:45 am]

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Federal Register

Thursday,
January 24, 2008

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List the Siskiyou Mountains Salamander (Plethodon stormi) and Scott Bar Salamander (Plethodon asupak) as Threatened or Endangered; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R8–ES–2008–0002; 1111 FY07 MO;ABC Code: B2]

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List the Siskiyou Mountains Salamander (Plethodon stormi) and Scott Bar Salamander (Plethodon asupak) as Threatened or Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding on a petition to list the Siskiyou Mountains salamander (*Plethodon stormi*) and Scott Bar salamander (*Plethodon asupak*) as threatened or endangered, under the Endangered Species Act of 1973, as amended (Act). After a thorough review of all available scientific and commercial information, we find that listing the Siskiyou Mountains salamander and Scott Bar salamander is not warranted. We ask the public to continue to submit to us any new information concerning the status of, and threats to, these species. This information will help us to monitor and encourage the ongoing management of these species.

DATES: We made the finding announced in this document on January 24, 2008.

ADDRESSES: This finding is available on the Internet at *http://www.regulations.gov* and *http://www.fws.gov/yreka/*. Supporting documentation we used in preparing this finding is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Yreka Fish and Wildlife Office, 1829 S. Oregon Street, Yreka, CA 96097; telephone 530–842–5763; facsimile 530–842–4517. Please submit any new information, materials, comments, or questions concerning this finding to the above address or via electronic mail (e-mail) at *Siskiyou_salamander@fws.gov*.

FOR FURTHER INFORMATION CONTACT: Phil Detrich, Field Supervisor, U.S. Fish and Wildlife Service, Yreka Fish and Wildlife Office (see **ADDRESSES** section). If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Act (16 U.S.C. 1531 et seq.) requires that, for any petition to revise the Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific and commercial information that listing may be warranted, we make a finding within 12 months of the date of our receipt of the petition on whether the petitioned action is: (a) Not warranted, (b) warranted, or (c) warranted, but the immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether any species is threatened or endangered. Such 12-month findings are to be published promptly in the **Federal Register**. Section 4(b)(3)(C) of the Act requires that we treat a petition for which the requested action is found to be warranted but precluded as though resubmitted on the date of such finding, and we must make a subsequent finding within 12 months.

Previous Federal Actions

On June 18, 2004, we received a petition dated June 16, 2004, from the Center for Biological Diversity, Klamath-Siskiyou Wildlands Center, and Noah Greenwald, to list the Siskiyou Mountains salamander (*Plethodon stormi*) as a threatened or endangered species on behalf of themselves and five other organizations. The petition clearly identified itself as such and included the requisite identification information for the petitioners, as required in 50 CFR 424.14(a). In their petition, the petitioners assert that there are three separate distinct population segments (DPSs) of the Siskiyou Mountains salamander, one of which consists of the Scott Bar salamander. Alternatively, the petitioners assert that the Scott Bar salamander is a separate species and request that it be considered independently for listing. Since the time the petition was submitted, the Scott Bar salamander (*Plethodon asupak*) has been recognized as a species separate from the Siskiyou Mountains salamander (Mead et al. 2005, pp. 169–171), and we have reviewed it separately in making this finding. The petitioners also requested the Service to consider whether the Siskiyou Mountains salamander (and therefore the Scott Bar salamander, as well) warrants listing throughout a significant portion of its range, and requested designation of critical habitat for both species concurrent with their listing. In a July 19, 2004, letter to the petitioners, we responded that we reviewed the petition for both species and determined that an emergency listing was not warranted, and that because of inadequate funds for listing and critical habitat designation, we would not be able to otherwise address the petition to list the Siskiyou Mountains salamander and Scott Bar salamander at that time.

On June 23, 2005, we received a 60-day notice of intent to sue and on August 23, 2005, the Center for Biological Diversity and four other groups filed a Complaint for Declaratory and Injunctive Relief in Federal District Court for the District of Oregon (*Center for Biological Diversity et al.* v. *Norton et al.*, No. 3:05–CV–1311–BR), challenging our failure to issue a 90-day finding on the petition to list the Siskiyou Mountains salamander and Scott Bar salamander. On December 28, 2005, we reached an agreement with the plaintiffs to complete the 90-day finding by April 15, 2006, and if we determined that the petition presented substantial information that listing may be warranted, to complete the 12-month finding by January 15, 2007.

On April 17, 2006, the Service made its 90-day finding (71 FR 23886, April 25, 2006), concluding that the petition did not present substantial scientific or commercial information to indicate that listing the Siskiyou Mountains salamander and Scott Bar salamander may be warranted.

On July 6, 2006, the Center for Biological Diversity and others filed suit in the United States District Court for the Northern District of California (*Center for Biological Diversity et al.* v. *Dirk Kempthorne et al.*, No. C–06–4186–WHA), challenging the merits of that finding. On January 19, 2007, the District Court determined the 90-day finding was arbitrary and capricious, vacated and remanded the finding, and ordered the Service to make a new finding by March 23, 2007.

A new 90-day finding was signed on March 22, 2007, and we published it in the **Federal Register** on March 29, 2007 (72 FR 14750). In that 90-day finding, we concluded that the petition presented substantial scientific or commercial information to indicate that listing the Siskiyou Mountains salamander and Scott Bar salamander may be warranted, announced the initiation of a status review of these taxa, and solicited comments and information to be provided in connection with the status review by May 29, 2007. This notice constitutes our 12-month finding regarding the petition to list these two species.

To ensure that this finding is based on the latest information and incorporates the opinions of the scientific community, the Service entered into a

Cooperative Agreement with the U.S. Geological Survey, Forest and Rangeland Ecosystem Science Center, in Corvallis, Oregon, to provide a technical report addressing taxonomy, biology, habitat associations, detectability, and effects of habitat alteration on the salamanders. The technical report was authored by Douglas DeGross and R. Bruce Bury, and reviewed by species experts in the U.S. Geological Survey, Forest and Rangeland Ecosystem Science Center; U.S. Forest Service (USFS) Pacific Northwest Research Station and Pacific Southwest Research Station; and Rogue River-Siskiyou National Forest. The technical report (DeGross and Bury 2007), information provided by the public, and additional information and data in our files provided the basis for this status review for the Siskiyou Mountains salamander and Scott Bar salamander. In addition, Service staff involved in the development of this finding have several years of combined experience surveying for and researching the distribution and habitat associations of Siskiyou Mountains salamander.

Foreseeable Future

The principal difference between an ''endangered'' and a ''threatened'' species under the Act is whether the species is currently in danger of extinction, or if it is likely to become so ''within the foreseeable future.'' The Act does not define the term foreseeable future; however, we consider the foreseeable future to be affected by the biological and demographic characteristics of the species, as well as our ability to predict or extrapolate the effects of threats facing the species in the future. Quantification of the time period corresponding to the forseeable future is challenging because it necessitates making predictions about inherently dynamic political, legal, and social mechanisms that influence the degree and immediacy of potential threats to the species.

Population dynamics of the Siskiyou Mountains salamander and Scott Bar salamander are poorly known, and we are unaware of data sufficient to support estimates of longevity, generation times, or recruitment rates for these species. For example, *Nussbaum et al.* (1983, p. 103) state that both sexes ''are thought to'' mature at 5 to 6 years of age, but provide no basis for this estimate. Likewise, estimates of population and genetically effective population (N_e) size are unavailable for these species (DeGross and Bury 2007, p. 9). Because the demographic and biological characteristics of these species are so poorly understood, we must base our estimate of foreseeable future on our ability to predict or extrapolate the effects of the future threats facing these species.

Our ability to predict the effects of future threats is limited to our knowledge of the time frame of the threats potentially facing the species (e.g., timber harvest, wildfire, roads and road construction, mining and rock quarrying, disease, stochastic events, and climate change) and of any conservation activities taking place to address these threats. For example, the rate of timber harvest has declined on Federal lands (which constitute over 85 percent of the combined ranges of both species) during the last 30 years (USDA and USDI 1994, 2005) and we have no information that would lead us to predict a dramatic increase in the rate and intensity of timber harvest such that large areas of habitat will be affected to such a great degree that these species will suffer adverse impacts. In the event that the rate and intensity of timber harvesting were to increase dramatically, it would take some period of time (depending on the actual increase of the rate and intensity, and the impact of the harvesting at issue on the salamanders) for the cumulative impact of the timber harvesting to have a significant effect on the species. Because the available evidence suggests that the salamanders recover for even intensive disturbances such as clearcutting (from 11 years (Bull et al. 2006, p. 21) to 30 years (Welsh et al. 2007b) for Siskiyou Mountains salamanders), the species would only become in danger of extinction if that increased level and intensity of harvest lasted long enough to effect sufficient habitat at nearly the same time such that it overcame the apparent resiliency of the species to such disturbances. Further, while scientists predict that the rate of temperature change will continue to increase throughout the present century (EPRI 2003, p. 3; Hayhoe et al. 2004, p. 12423; Cayan et al. 2006, pp. 11–14, 31; Maurer 2007, p. 317), the effects of climate change on these species are uncertain and estimation of the timing of potential effects would be speculative.

We do not have sufficient demographic information on Siskiyou Mountains salamanders or Scott Bar salamanders, nor on the trajectory of potential threats when combined with existing regulatory mechanisms, on which to base a precise definition of foreseeable future. Given the stability of Federal Land and Resource Management Plans and the Northwest Forest Plan (NWFP) since its establishment in 1994, we assume that significant changes to current land management practices on Federal lands are not likely to occur within 20 years. We note that the changes in Federal land management that we can anticipate may happen in the short term, including termination of the Survey and Manage Program and Western Oregon Plan Revision, discussed below, are unlikely to result in the sort of significant changes that might have an important effect on the conservation status of the species. If a significant change were to occur, we estimate that, because of logistical and regulatory limitations imposed on the rate of planning and implementing significant land management actions, actual management activities could take an additional 20 years to reach a magnitude of effect that would measurably affect salamander populations. Therefore, we conclude that the foreseeable future for the salamanders does not extend beyond 40 years. In other words, we have sufficient confidence in our estimates of the threats and reaction of the two species to those threats to draw a conclusion as to the likelihood of endangerment over only at most 40 years. Beyond that period, our level of confidence is such that any conclusions we drew would be too speculative on which to base current action. We find that this estimate of the foreseeable future is both reasonable and appropriate because it focuses this status review on the time frame in which current social and political change may affect species management, which we consider to have the most likely potential for meaningful near-term influence on the status of these species.

Species Descriptions

Like others in the Family Plethodontidae (the lungless salamanders), the Siskiyou Mountains salamander and Scott Bar salamander are completely terrestrial, medium-sized, slender-bodied salamanders with short limbs and a dorsal stripe. Both species are found in or near talus (loose surface rock) and fissured rock outcrops where moisture and humidity are high enough to allow respiration through their skin (Feder 1983, p. 296; Nussbaum et al. 1983, pp. 73, 90, and 102; Stebbins 2003, p. 168). Both species are endemic to the Klamath-Siskiyou Mountains of southern Oregon and northern California, where they are considered as part of a species complex that includes and is named for the similar Del Norte salamander (*Plethodon elongatus*).

Members of the *Plethodon elongatus* Complex differ physically from other regional members of the genus

Plethodon. Species in the *Plethodon elongatus* Complex have webbed toes, while Dunn's salamander (*P. dunni*) and western red-backed salamander (*P. vehiculum*) do not (Highton 1962, pp. 255–256). The larger number of trunk vertebrae and costal grooves (vertical creases along the side of the body), as well as the smaller number of vomerine teeth (teeth on the vomer bone in the roof of the mouth) further distinguish the *Plethodon elongatus* Complex from the rest of the western *Plethodon* species (Highton and Brame 1965, p. 1; Brodie 1970, pp. 503–505; Nussbaum et al. 1983, p. 102; Mead et al. 2005, pp. 163–166).

The Siskiyou Mountains salamander was described in 1965, two years after it was first identified (Highton and Brame 1965, p. 1). It is characterized by a modal number of 17 costal grooves and 4 to 5.5 intercostal folds (folds of skin between the costal grooves) between the toes of adpressed limbs (limbs firmly pressed against the sides of the body) (Nussbaum et al. 1983, p. 102; Leonard et al. 1993, p. 78). Adults have a light- to purplish-brown dorsum, and the body is sprinkled with a moderate to dense array of white to yellow flecks, concentrated on the sides and limbs and away from the light-brown dorsal stripe (Highton and Brame 1965, p. 1; Nussbaum et al. 1983, p. 102). Juveniles are black and have an olive-tan dorsal stripe that extends onto the tail.

The Scott Bar salamander is more robust and has a wider head and longer limbs than the Del Norte salamander and Siskiyou Mountains salamander. It has fewer intercostal folds between adpressed limbs (2.5 to 3.5) than either the Del Norte salamander (5 to 6) or Siskiyou Mountains salamander (4 to 5.5), and the modal number of costal grooves (17) is one less than in the Del Norte salamander (18). The Scott Bar salamander has a longer body relative to its tail length and longer forelimbs and hindlimbs than the Siskiyou Mountains salamander or Del Norte salamander. The coloration of the Scott Bar salamander is similar to that of the Siskiyou Mountains salamander and is described in Mead et al. (2005, p. 170). Despite the morphological differences described in Mead et al. (2005, pp. 169–171), the two species are difficult to distinguish in the field.

Taxonomy

The Siskiyou Mountains salamander was first identified in 1963, adding the second form to what is now referred to as the *Plethodon elongatus* Complex (Highton and Brame 1965, p. 1). Early distinctions between Siskiyou Mountains salamanders and Del Norte salamanders were based on morphological traits and coloration (Highton and Brame 1965, p. 1; Brodie 1970, pp. 503–505; Bury 1973, p. 57). However, it is now clear that field identification of these species based on coloration is unreliable because both species exhibit geographic variation in coloration (Brodie 1970, p. 503; Bury 1999, pp. 9–10).

Researchers have cited morphological differences as evidence of a taxonomic distinction between Siskiyou Mountains salamanders and Del Norte salamanders. Perhaps the most convincing support for distinguishing between these forms was provided by Mead et al. (2005, pp. 165–166), who found that all three species in the *Plethodon elongatus* Complex differed in average measurements of male snout-vent length, forelimb length, and head width; and female snout-vent length, forelimb length, and internarial distance. Additionally, both Siskiyou Mountains salamanders and Scott Bar salamanders have a smaller modal number of costal folds and proportionally larger forelimbs than Del Norte salamanders, contributing to their more robust appearance (Highton and Brame 1965, p. 1; Mead et al. 2005, p. 170).

Phylogenetic studies of the *Plethodon elongatus* Complex have provided further support for classifying Siskiyou Mountains salamanders and Del Norte salamanders as closely related species (Mahoney 2001, p. 183; Mahoney 2004, pp. 155–161; Bury and Welsh 2005, p. 842; Mead et al. 2005, p. 166). Phylogenetic studies of these species have also shown that early studies of the morphology of Del Norte salamanders along the Klamath River between Happy Camp and Seiad Valley, California, were in fact describing Siskiyou Mountains salamanders (Pfrender and Titus 2001, p. 15; DeGross 2004, pp. 17–18; Mahoney 2004, p. 5; Mead et al. 2005, p. 173; Mead 2006, pp. 15–16). In fact, Bury (1973, p. 57) proposed possible intergradation between these two species, and Stebbins (1985, p. 47; 2003, pp. 173–174) demoted the Siskiyou Mountains salamander to a subspecies of Del Norte salamander. However, recent research suggests that little gene flow occurs between these species across their zone of contact in the Indian Creek drainage in western Siskiyou County, California (DeGross 2004, p. 40; DeGross et al. unpublished).

Phylogenetic studies of the Siskiyou Mountains salamander have indicated that this species consists of two distinct genetic lineages: North Clade (populations within the Applegate River drainage and on the crest of the Siskiyou Mountain Range) and South Clade (populations south of the Siskiyou Mountain Range crest and adjacent to the Klamath River) (Pfrender and Titus 2001, pp. 5–6; DeGross 2004, pp. 24–44; Mahoney 2004, p. 8; Mead et al. 2005, pp. 163–166). A third, more divergent, group was also identified and is now recognized as a separate species, the Scott Bar salamander.

Based on levels of genetic divergence between species in the *Plethodon elongatus* Complex, researchers estimated that the Del Norte salamander and Siskiyou Mountains salamander lineages diverged approximately 4 million years ago and that their shared ancestral lineage diverged from that of the Scott Bar salamander between 20 and 26 million years ago (Mahoney 2004, p. 15; Mead et al. 2005, p. 165). Therefore, the Scott Bar salamander lineage appears to be the basal (most primitive, from which others are derived) lineage of the *Plethodon elongatus* Complex. Given the time periods during which these species diverged, speciation within this complex was probably influenced by Pleistocene glaciation (Soltis et al. 1997, pp. 369–370; Bury 1999, p. 22; DeGross and Bury unpublished).

Differences between Scott Bar salamanders and the other members of the *Plethodon elongatus* Complex are not limited to their genetic divergence. As noted above, Mead et al. (2005, pp. 165–166) found differences in morphological measurements of all three species. Nonetheless, questions about the validity of the current classification of these species persist (sensu Wake and Jockusch 2000, p. 117). Further, the ranges of the Scott Bar salamander and Siskiyou Mountains salamander abut each other north of the Klamath River and south of Horse Creek, so it is possible that these species interbreed in this area. Measurements of gene flow between these species would be helpful to further clarify the taxonomy of southern populations of Siskiyou Mountains salamanders and Scott Bar salamanders and define the interspecific boundaries for each species range (DeGross and Bury 2007, p. 4; Wake and Jockusch 2000, p. 117).

The Service recognizes that questions about the taxonomy of the *Plethodon elongatus* Complex remain and that research on this topic is ongoing. However, for the purpose of this finding, we evaluated the threats to the Siskiyou Mountains salamander and Scott Bar salamander separately because the preponderance of available evidence currently supports recognition of these forms as separate species. Even so, the ecological research on these species was

conducted prior to recognition of the Scott Bar salamander as a separate species, and since both species are members of the Family Plethodontidae, their life histories and habitat associations appear to be similar. Therefore, for the purpose of this finding, we use the current literature describing the biological characteristics and ecology of the Siskiyou Mountains salamander for both species.

For the purposes of this finding, we use the following hierarchy of taxonomic names:

(1) *Plethodon elongatus* Complex: Plethodon salamanders within the geographic region occupied by Del Norte salamander, Siskiyou Mountains salamander, and Scott Bar salamander.

(2) Siskiyou Mountains salamander Complex: The three known genetic entities previously classified as Siskiyou Mountains salamander, consisting of the Scott Bar salamander, Siskiyou Mountains salamander North Clade, and Siskiyou Mountains salamander South Clade.

(3) Siskiyou Mountains salamander (North and South Clades combined), not including the Scott Bar salamander.

(4) Individual genetic subunits of Siskiyou Mountains salamander: North Clade (hereafter referred to as the Applegate salamander) and South Clade (hereafter referred to as the Grider salamander).

Biology

Like other members of the Family Plethodontidae, Siskiyou Mountains and Scott Bar salamanders require contact with moisture for respiration through their permeable skin (Feder 1983, pp. 292–293). Desiccation is lethal to *Plethodon* species and therefore, surface activity by Siskiyou Mountains and Scott Bar salamanders primarily occurs at night, when the air is cool and moist (Nussbaum 1974, p. 3; Nussbaum et al. 1983, p. 103; Clayton and Nauman 2005, p. 139; Mead et al. 2005, p. 118). Peak periods of surface activity occur during the rainy season (usually late fall and spring) (Clayton and Nauman 2005, p. 139; Mead et al. 2005, p. 118). These salamanders retreat to underground refugia during the extreme climatic conditions common during summer and winter in the eastern Klamath Mountains (Nussbaum 1974, p. 3). They may forage at the surface during the summer (Nussbaum et al. 1983, p. 103) but probably only in sites with relatively cool, moist microclimates. Little is known about these species' behavior, but many researchers assume that they are inactive underground and that foraging and reproduction only occur during brief periods of surface activity (Feder 1983, p. 305). However, it is possible that these activities also occur below the surface (Welsh and Lind 1992, p. 433). The limited surface activity by these species is reflected in survey protocols for Siskiyou Mountains salamanders, which require that surveys be restricted to periods of relative humidity above 65 percent, air temperatures between 39.2 and 68 °F (4 to 20 °C), soil temperatures between 38.3 and 64.4 °F (3.5 to 18 °C), and moist soil conditions (Clayton et al. 1999, p. 133).

Plethodon salamanders are fully terrestrial amphibians and do not need standing or flowing water for any stage of their life cycle (Zug et al. 2001, p. 383). Eggs are thought to be laid in small clusters deep in moist, rocky substrates, but this has not been observed by researchers. Females have clutches of 2 to 18 eggs, with an average of 9 eggs per clutch (Nussbaum et al. 1983, pp. 21–23). Juveniles emerge in late fall and early spring. Welsh and Lind (1992, p. 432) reported that juveniles captured in mid-spring were significantly larger than would be expected if newly hatched. These salamanders appear to become reproductively mature at 5 to 6 years and are relatively long-lived (up to 15 years) (Nussbaum et al. 1983, p. 103; Clayton and Nauman 2005, p. 139). Females appear to breed every other year (Nussbaum 1974, p. 22).

Siskiyou Mountains and Scott Bar salamanders are 'lie-and-wait' predators that prey on a variety of small terrestrial invertebrates, including spiders, pseudoscorpions, mites, ants, collembolans, and beetles (Nussbaum et al. 1983, p. 103). Seasonal changes in diet have been reported for these species (Nussbaum 1974, p. 24). Predators of these species have not been identified but may include snakes, shrews, or animals that opportunistically forage in spring leaf litter and debris (e.g., ground-foraging birds). Several researchers have hypothesized that interspecific and intraspecific competition are important factors in the population ecology of Siskiyou Mountains and Scott Bar salamanders (Nishikawa 1985, p. 1290; Mathis 1989, p. 790; Griffis and Jaeger 1998, p. 2500). These species' ranges overlap with those of ensatina (*E. eschscholtzii oregonensis*) and black salamanders (*Aneides flavipunctatus*), and a recent study described one site where they are sympatric with Del Norte salamanders (Mead 2006, p. 8). We are not aware of any information about parasites or diseases affecting these species or information about symbiotic or mutualistic interactions with other organisms.

Habitat Associations

Siskiyou Mountains salamanders and Scott Bar salamanders occur on slopes with rocky soils or talus (loose surface rock) outcrops. These substrates provide interstitial spaces into which these animals can retreat from the climatic extremes of the eastern Klamath Mountains. These salamanders are occasionally found under other types of cover, such as bark, limbs, or logs, but only during wet weather when moisture is high and only in close proximity to suitable rocky substrates (Nussbaum 1974, p. 13; Nussbaum et al. 1983, p. 102). Like other plethodontids, Siskiyou Mountains salamanders and Scott Bar salamanders require contact with moisture for respiration through their skin. Therefore, habitat characteristics that influence forest microclimates, especially relative humidity and soil surface moisture, are likely important to these species. Based on these species' similar natural histories and physiologies (see ''Biology'' section), occurrence in the same region, and previous designation as one species, we assume that Siskiyou Mountains salamanders and Scott Bar salamanders have similar habitat requirements. As noted above, nearly all of the available information on these species comes from studies conducted on both species, prior to recognition of Scott Bar salamander as a separate species.

Early observational studies of Siskiyou Mountains salamanders found that these animals are highly associated with talus and other rocky substrates (Highton and Brame 1965, p. 1; Storm 1966, p. 1; Nussbaum 1974, p. 13; Clayton and Nauman 2005, p. 139; Mead et al. 2005, p. 118). Nussbaum (1974, p. 13) found that the densest populations were on heavily wooded, north-facing slopes that also had talus deposits or fissured rock outcrops. Many of the earliest known populations of Siskiyou Mountains salamanders occurred in talus road cuts, where the underlying rock substrate was exposed and detection of salamanders was facilitated (Nussbaum 1974, p. 13).

The degree to which Siskiyou Mountains salamanders and Scott Bar salamanders are associated with late-seral forest conditions has been the subject of considerable uncertainty and debate among scientists and land managers. Understanding this debate is essential to understanding the Service's finding for these species. The debate is exemplified by the salamander population at Muck-a-Muck Creek, the type locality from which the Scott Bar salamander was described (Mead et al. 2005, p. 169). Biologists and researchers

use Muck-a-Muck as a ''reference site,'' a location with reliable salamander detections that can be checked prior to conducting surveys in other nearby areas to confirm that current weather conditions are within proper limits to conduct these surveys. However, even when survey conditions are adequate, salamanders may not be detected at this known reference site on any given single visit. Located adjacent to a road, the site experienced hydraulic mining in the late 1800s and currently supports a sparse overstory of young and early mature trees. These habitat conditions are representative of habitat at many locations occupied by apparently viable populations of Siskiyou Mountains salamanders (Bull et al. 2006, pp. 19–22; CDFG 2005, p. 24; Farber 2007a, pp. 3–4). The regularly reported existence of salamander populations at sites like the Muck-a-Muck Creek site undercuts the conclusion of some researchers (based on the results of a single study) that the species is dependent on old-growth forest (Ollivier et al. 2001, pp. 26–29; Welsh et al. 2007a, p. 31).

The results of studies of habitat relationships conducted to date are equivocal or provide limited inferences. Limited inferences result from either (1) lack of a random or systematic sampling design that allows inference to a larger population, or (2) single-visit sampling that fails to incorporate the low and variable detection rates associated with these species. Two analyses of a single, relatively large-scale, single-visit, random, sampling-based study suggested an association with closed-canopy, older forest (Ollivier et al. 2001; Welsh et al. 2007a), whereas field studies evaluating habitat attributes at known (not randomly or systematically selected) locations demonstrated that the species are found in a wide range of forest structural conditions (Farber et al. 2001; Bull et al. 2006; Farber 2007a). We are not aware of any rigorous studies evaluating the species' demographic responses to forest conditions.

The most rigorous research of these species' habitat associations was conducted by Ollivier et al. (2001) and Welsh et al. (2007a). These studies used the same data set and somewhat different analytical techniques. The data used in both analyses were collected at 61 sites occupied by Siskiyou Mountains salamanders and possibly Scott Bar salamanders (a few sites were located within the range of what were later recognized as Scott Bar salamanders). These sites were compared with sites classified as unoccupied by salamanders (see below). These studies found that salamander populations on either side of the Siskiyou Crest appeared to occupy habitat based on different environmental factors (Welsh et al. 2007a, p. 28). The authors primarily attributed this result to geographic differences in precipitation, illumination (topographic variation in sunlight or shading), and vegetation (Welsh et al. 2007a, pp. 19, and 28). Based on these differences, they suggested that suitable habitat is less abundant and more patchily distributed on the south side of the crest than on the north side (Welsh et al. 2007a, p. 28). Although these results differed somewhat for salamanders on either side of the Siskiyou Crest, they generally indicated that sites occupied by salamanders contained attributes that likely moderate surface microclimates for these animals (e.g., greater canopy closure, more leaf litter cover, more decaying logs) or that are associated with moist, cool microclimates (e.g., less grass cover, more sword fern cover) (Ollivier et al. 2001, pp. 17–21, 26–29; Welsh et al. 2007a, pp. 24, 27). Both analyses concluded that Siskiyou Mountains (and possibly Scott Bar) salamanders are ''a mature to old-growth-forest-associated species that exists at its biological optimum under conditions found primarily in later seral stages of mixed conifer-hardwood forests in northwestern California and southwestern Oregon'' (Ollivier et al. 2001, p. 42; Welsh et al. 2007a, p. 31). However, the authors also state that ''[t]oday, information on the habitat requirements of this species is incomplete and conflicting'' (Welsh et al. 2007a, p. 16) and ''[m]any of the biotic and abiotic requirements necessary for long-term viability for the Siskiyou Mountains salamander remain undetermined'' (Welsh et al. 2007a, p. 31). It is important to note that the results of these studies only indicate correlations between forest attributes and the presence of salamanders; they do not actually demonstrate that these species select habitat based on older-forest characteristics (Welsh et al. 2007a, p. 31). For example, these salamanders may select habitat based on other factors (e.g., suitable microclimates) that often occur within older forests but that can also occur in other areas such as deep drainages and north-facing slopes.

Our understanding of the habitat associations of Siskiyou Mountains salamander and their degree of ecological dependence on specific habitat conditions is hampered by the difficulty in detecting this species during surveys. Their brief, intermittent periods of surface activity, nocturnal habits, and secretive behavior make detection of Siskiyou Mountains salamanders and Scott Bar salamanders difficult (Nussbaum 1974, p. 3; Olson et al. 2007, pp. 7–8). Welsh et al. (2007a, p. 25) estimated that their detection rates for these species were 20 and 28 percent on the south and north slopes of the Siskiyou Crest, respectively. Detection rates for other *Plethodon* species are similarly low: 15 percent (Bailey et al. 2004, p. 21) and 2 to 32 percent (Taub 1961, p. 695). Because detection rates are low for these species, repeated surveys and estimation of the probability of false negatives during surveys are required to minimize or account for the probability of classifying occupied sites as unoccupied. The survey protocol developed for the NWFP Survey and Manage Guidelines (Clayton et al. 1999, p. 141) requires three survey visits to determine presence or absence of Siskiyou Mountains salamanders. Classifying occupied sites as unoccupied, or failing to account for the probability of doing so, can bias conclusions about relationships between salamanders and habitat characteristics. The presence or absence data analyzed by Ollivier et al. (2001) and Welsh et al. (2007a) were collected with a single-visit protocol, so these studies cannot reliably infer absence at sites where detections were not obtained. In fact, the California Department of Fish and Game (CDFG) used a more intensive survey protocol to resurvey 13 clear-cut or precanopy (0 to 30 years-old) sites classified as unoccupied by Ollivier et al. (2001) and Welsh et al. (2007a) and found Siskiyou Mountains salamanders at 5 sites, Scott Bar salamanders at 2 sites, and Del Norte salamanders at 1 site (Bull et al. 2006, p. 25). While this finding does not appear to change the general conclusion described by Ollivier et al. (2001) and Welsh et al. (2007a) that salamanders were more likely to be detected in closed-canopied older forest than in more open sites, it acts to substantially weaken the inference of Ollivier et al. (2001, p. 42) and Welsh et al. (2007a, p. 31), that these species are ecologically dependent on conditions primarily found in mature or late-seral stage forests.

Two other studies have examined potential relationships between habitat attributes and abundances of Siskiyou Mountains salamanders and Scott Bar salamanders. Farber (2007a) described sites occupied by Scott Bar salamanders on private timber company property and adjacent National Forest land. This study compared salamander abundances and habitat characteristics at 26 sites

within a relatively small area (29 acres (ac) (11.7 hectares (ha))) and found that salamander abundance was only significantly related to percent rock cover. A large proportion of the occupied sites (94 percent) had evidence of at least one previous manmade or natural disturbance (Farber 2007a, p. 3). Bull et al. (2006) described CDFG surveys at 68 sites occupied by Siskiyou Mountains or Scott Bar salamanders. Eighty-seven percent of these sites were on private timberlands, and the remaining sites were on Federal lands (Bull et al. 2006, p. 24). Like Farber (2007a), CDFG found evidence of previous disturbance at most (82 percent) occupied sites (Bull et al. 2006, p. 24). Roughly 83 percent of the sites occurred in forest stands with relatively open canopies (less than 60 percent canopy closure). They also found that salamander sites occurred within a wide range of environmental conditions, including all slope aspects and nearly all (16 of 18) California Wildlife Habitat Relationships tree size and canopy classes (Bull et al. 2006, p. 24). These studies' sampling designs preclude inferences about the habitat preferences of other Siskiyou Mountains salamander populations because they were focused on known salamander sites and did not take into account the broad range of habitat that is potentially available to these salamander species. However, both studies showed that Siskiyou Mountains salamanders and Scott Bar salamanders occur within a relatively wide range of forest conditions, and were not extirpated by the disturbances (timber harvest) that created those conditions.

To support their argument that the Siskiyou Mountains salamander is critically imperiled by habitat loss, the petitioners rely heavily on statements made by Welsh et al. (2007a) as providing new scientific information that the salamanders are highly associated with, and ecologically dependent on, old-growth forest conditions, and the petitioners highlight an ongoing debate between Dr. Welsh and the CDFG (Greenwald and Curry 2007, pp. 4–7). As discussed above, we conclude that the survey methodology employed by Ollivier et al. (2001) and Welsh et al. (2007a, p. 18) was inadequate to rigorously determine salamander absence as required for the presence-absence statistical modeling method used to analyze the data. The single-visit sampling methodology these authors employed is more appropriate for comparisons of relative abundance among habitat types, which is how we interpreted their results. The fact that salamanders were subsequently detected by CDFG at over half of the 'absent' sites analyzed by Welsh et al. (2007a) does not negate the importance of this study or the habitat associations it describes; it does, however, limit the strength of inference regarding the degree to which Siskiyou Mountains salamanders may require old-growth forest conditions. We do not consider the field studies conducted by CDFG (Bull et al. 2006) as providing competing scientific research requiring reconciliation with the statistical design of the Welsh et al. (2007a) study. The CDFG field studies do, however, provide habitat results from a large sample of occupied salamander locations, which, in combination with similar data sets from Farber et al. (2001), constitute a significant source of information on these species.

A model was recently developed for predicting the occurrence of Siskiyou Mountains salamanders north of the Siskiyou Crest (Reilly et al. 2007). This model incorporated three variables reported by Ollivier et al. (2001) and Welsh et al. (2007a) to be positively related to occupancy by Siskiyou Mountains salamanders: rocky soil types, forest canopy closures above 70 percent, and conifer forest with average tree sizes greater than 17 inches (43 centimeters) in diameter at breast height (DBH) (Reilly et al. 2007, p. 1). An additional variable modeling topographical variation in sunlight or shading was also incorporated (Reilly et al. 2007, p. 2). Strategic surveys of sites that were predicted by the model to be occupied had 65 percent detection rates (34 of 52 sites were occupied), the highest ever reported for this species (Nauman and Olson 2004, p. 3). In addition to indicating the usefulness of presence or absence modeling as a scientific and management tool, this relatively high detection rate seems to support the associations described by Ollivier et al. (2001) and Welsh et al. (2007a).

Summary of Habitat Associations

Few studies of the habitat associations of Siskiyou Mountains salamanders and Scott Bar salamanders have been conducted. These include only a single large, systematic sample effort, from which two analyses were conducted (Ollivier et al. 2001 and Welsh et al. 2007a). These analyses found positive relationships between detection of Siskiyou Mountains salamanders (and possibly Scott Bar salamanders) and habitat characteristics that likely moderate surface microclimates for them (e.g., high canopy closure, more leaf litter cover, more decaying logs). Studies by Farber et al. (2001), Farber (2007a), and CDFG (Bull et al. 2006) were smaller and less rigorous than the analyses by Ollivier et al. (2001) and Welsh et al. (2007a). However, they clearly showed that Siskiyou Mountains salamanders and Scott Bar salamanders occur within a wide range of habitat conditions, including clear-cuts and young forest. The limited available evidence suggests that these species are highly associated with talus and fissured rock outcrops and are generally associated with moist, cool surface microclimates. These salamanders are likely more common in mature and old-growth forest than in other forest classes, but many salamander sites occur in other habitat types. Potential differences in the size and viability of populations in open or disturbed habitat and mature or old-growth habitat are discussed below under Factor A.

Range and Extant Distribution

Range

Currently known populations within the Siskiyou Mountains salamander Complex occur within Jackson County and the extreme southeast portion of Josephine County in southwestern Oregon, and in northern Siskiyou County in northwestern California. In Oregon, known populations occur in the Applegate Valley watershed north of the Siskiyou Crest. In California, the species complex occurs in the Klamath River drainage, south of the Siskiyou Crest, in the area bounded to the west by Indian Creek and the headwaters of Grider Creek, Kelsey Creek, and Canyon Creek; to the south by Scott Bar Mountain; and to the east by the headwaters of Mill Creek and the Horse Creek drainage. This range is subdivided into three areas based on genetically distinct populations. Siskiyou Mountains salamander North Clade (or Applegate Population) occupies the area north of the Siskiyou Crest; Siskiyou Mountains salamander South Clade (or Grider Population) occurs south of the Siskiyou Crest; and the Scott Bar salamander is found in the southeastern portion of the former range of Siskiyou Mountain salamander South Clade.

Boundary lines for the ranges of the members of the Siskiyou Mountains salamander Complex have been variously estimated by several authors (DeGross 2004, p. 15; Nauman and Olson 2004, p. 2; 2007, p. 4) and have changed through time as additional populations were discovered and results of genetic analyses were obtained. For the purposes of this finding, we delineated species' ranges and calculated landscape statistics based on

range boundaries proposed by Nauman and Olson (2007, p. 4) but we slightly modified these boundaries based on new species locations, watershed boundaries, and distribution of suitable habitat. Based on the locations of genetic samples of Scott Bar salamanders, we estimated its range to incorporate the southeastern portion of the former Siskiyou Mountains salamander's range. However, the uneven distribution of surveys and small number of locations with genetic confirmation creates uncertainty as to the actual extent of the Scott Bar salamander. The resulting estimated range (136,740 ac (55,335 ha)) is considerably larger than previous estimates that were based on a small number of genetically confirmed locations; some of this expansion is the result of confirmation of one Scott Bar salamander location in the Walker Creek drainage (DeGross 2007). Several watersheds in the southern portion of the estimated range delineated by Nauman and Olson (2007, p. 4) do not have records of Siskiyou Mountains or Scott Bar salamander locations. Review of these areas by species experts (Cuenca 2007; Clayton 2007) indicated that surveys have not been conducted there, but suitable habitat is widespread. Additional surveys and genetic analyses are necessary to adequately delineate the southern boundary of the Scott Bar salamander and Siskiyou Mountains salamander. Our estimates of species' ranges are intended for use in evaluating species' distribution across various land ownership and Federal land allocations; they are not intended to represent precise estimates of occupied habitat.

Our understanding of the range and distribution of the Siskiyou Mountains salamander Complex is dynamic; the known range has roughly tripled between 1980 and 2007, doubling between 1993 and 1998 (Olson et al. 2007, p. 20). Biologists familiar with the species believe that the currently known range is well-defined to the east by xeric conditions and unsuitable soil types, and to the west by the range of the Del Norte salamander (Olson et al. 2007, p. 19). However, it is likely that the known range will continue to be refined and expanded through discovery of additional populations to the south in the Scott River, Canyon Creek, Kelsey Creek, and Upper Grider Creek drainages, and to the north in the Applegate River drainage. For example, two detections of salamanders described as Siskiyou Mountains salamanders were reported by a Survey and Manage Guidelines survey crew near the town of Rogue River in 2006 (DeGross 2007). If confirmed, these detections would represent a range expansion of roughly 5 miles (mi) (8.45 kilometers (km)).

We were unable to find any information suggesting that the occupied range of any member of the Siskiyou Mountains salamander Complex is different from its historical range. Many occupied locations exist within watersheds that have sustained considerable physical modification by historical mining, roadbuilding, and logging. As described above, the species' ranges appear to be defined by climatic conditions, soil and parent material type, and the adjacent Del Norte salamander (Olson et al. 2007, p. 19).

Distribution

The distribution of Siskiyou Mountains and Scott Bar salamander populations within their respective species' ranges is poorly known. With the exception of systematic surveys conducted by Ollivier et al. (2001) and Nauman and Olson (2004a and 2004b), the majority of surveys have been opportunistic or conducted in support of timber management planning activities. Large areas within the species' known ranges remain unsurveyed due to poor access or lack of planned projects requiring surveys. The lack of systematic surveys may result in biased estimates of population distribution. For example, because CDFG requires surveys for Siskiyou Mountains salamanders and Scott Bar salamanders during the Timber Harvest Plan (THP) review process, a high proportion (40 percent) of known Scott Bar salamander locations have been reported on private timberlands, which accounts for only 22 percent of the known range of the species (see Table 1 below).

TABLE 1.—PROPORTION OF LAND OWNERSHIP WITHIN THE ESTIMATED RANGES OF SISKIYOU MOUNTAINS SALAMANDERS (SMS) AND SCOTT BAR SALAMANDERS (SBS)

	Applegate SMS (%)	Grider SMS (%)	Scott Bar salamander (%)	SMS–SBS complex (%)
Private Lands	15	9	22	15
Federal Lands:				
USFS	66	91	78	76
BLM	19	0	0	9
Total Area (ac)	248,870	174,285	136,740	559,895
Total Area (ha)	100,712	70,529	55,335	226,578

Population distribution is strongly influenced by the abundance and distribution of suitable talus habitat. Using a Geographic Information System (GIS)-based predictive model, the Survey and Manage Guidelines Species Review Panel for Siskiyou Mountains salamanders estimated that roughly 30 percent of the known range north of the Siskiyou Crest consisted of high-quality talus habitat (USDA and USDI Species Review Panel 2002), but pre-disturbance surveys conducted in the same area found that 3 to 14 percent of a given planning area (10,000 to 15,000 ac (4,047 to 6,070 ha)) consisted of suitable rock substrate (USDA and USDI Species Review Panel 2001). Based on surveys and mapping of rock habitat, Timber Products Company estimated that approximately 18 percent of their surveyed lands within the range of the Scott Bar salamander was composed of suitable talus habitat (Farber 2006). Using a similar methodology, Fruit Growers Supply Company (2007) estimated that 19 percent of 2,615 ac (1,058 ha) surveyed within the range of the Applegate Population of the Siskiyou Mountains salamander was composed of suitable talus habitat.

The Siskiyou Mountains salamander Complex occurs within a roughly 500,000 ac (202,346 ha) area dominated by Federal lands (see Table 1). The range of the Applegate Population (North Clade) of the Siskiyou Mountains salamander occurs within 248,870 ac (100,712 ha), consisting primarily (85 percent) of Federal lands, and more than 90 percent of the 174,285 ac (70,529 ha) range of the Grider Population (South Clade) of the Siskiyou Mountains salamander occurs on Federal lands (see

Table 1). The Scott Bar salamander has the smallest range, covering approximately 136,740 ac (55,335 ha), and occurs on the smallest proportion of Federal lands (78 percent) within the complex (see Table 1).

Known populations appear to be well-distributed across their respective species' ranges. To evaluate spatial distribution of salamander locations within each species' range at a coarse scale, we compared known locations to watershed boundaries within each species' range. Site locations of the Applegate Population of the Siskiyou Mountains salamander occur within 19 of the 21 watersheds that constitute the range of this group. The range of the Grider Population of the Siskiyou Mountains salamander is composed of 36 watersheds of which 23 (64 percent) contain known populations. The 13 watersheds without known salamander locations are primarily situated in Wilderness and Roadless areas where access is difficult and few surveys have been conducted. Known locations of Scott Bar salamanders occupy 17 of the 25 watersheds within their range. Of the eight watersheds without known locations, six are within Wilderness and Roadless areas where suitable habitat exists but surveys have not been conducted.

Nauman and Olson (2007) conducted surveys at a stratified random sample of points located on Federal lands within the range of the Grider Population of the Siskiyou Mountains salamander and the Scott Bar salamander. They found occupancy rates (presence or absence) to be similar at high-elevation (greater than 4,000 feet (ft) (1,219 meters (m)) sites and low-elevation (less than 4,000 ft (1,219 m)) sites, but relative abundance (captures per person, per hour) at low-elevation sites was roughly twice that at high elevation. The authors conducted a single survey visit per site during one season, and did not evaluate the potential effect of variable detection probabilities at different elevations on their results, which, as noted above, may underestimate the number of animals actually present; however, their findings suggest that these salamanders may be less abundant or less detectable at higher elevations.

Population Size and Trend

Evaluation of potential population sizes for the Siskiyou Mountains salamander and Scott Bar salamander is strongly influenced by the species' low detectability and the amount and distribution of potentially suitable habitat. Because of their secretive habits, detection rates for these salamanders are very low, even though the species may be locally quite abundant (Nussbaum 1974, p. 3; Clayton et al. 1999, p. 133). Results of surveys within habitat known to be occupied are frequently negative (Clayton et al. 2004, p. 10; CDFG 2005, p. 10). Individual populations likely range in size from a few individuals to thousands of individuals (Nussbaum 1974, p. 16; Welsh and Lind 1992, p. 96). Based on extrapolation of salamander densities obtained during intensive field surveys, Nussbaum (1974, p. 16) provided a species-wide ''conservative estimate'' of over 3 million Siskiyou Mountains salamanders, and opined that the actual abundance could be 10 times as high. While the author acknowledged that a number of methodological problems may affect this estimate, it nonetheless suggests that the perceived rarity of this species may be more related to low detectability than to actual population size.

Our current understanding of population sizes for Siskiyou Mountains salamander and Scott Bar salamander is based primarily on the cumulative number of occupied sites or locations that have been reported over time. However, these numbers may be misleading for several reasons. At many locations, particularly sites detected during project surveys under Survey and Manage Guidelines, no attempt was made to determine population size; detection of a single individual was adequate to define an occupied site. Because of this, large habitat patches potentially supporting many individual salamanders are counted as equivalent to small habitat patches or detections of dispersing individuals. In addition, large areas of suitable habitat remain unsurveyed, particularly in Wilderness, Roadless Areas, and Late-successional Reserves where access is poor or project surveys are typically not conducted (Late-successional Reserves are a NWFP land allocation designed to serve as habitat for late-successional- and old-growth-related species). For example, approximately 10 percent and 26 percent of the range of the Scott Bar salamander and Grider salamander, respectively, is classified as ''Roadless Area.'' Finally, known locations are frequently spatially clumped, and no uniform effort to distinguish between individual populations has been undertaken. Agencies and researchers involved with these species employ several criteria (e.g., 164 to 492 ft (50 to 150 m) spacing, presence of perennial stream or area of unsuitable habitat) to imply separation between occupied locations or ''populations.'' For these reasons, the currently known numbers of Siskiyou Mountains salamanders and Scott Bar salamanders are more representative of the distribution and intensity of survey efforts than of actual salamander populations.

The numbers of known locations of Siskiyou Mountains salamanders and Scott Bar salamanders have increased steadily since the discovery of these species. For example, the number of known locations of Scott Bar salamanders on lands managed by Timber Products Company increased from 8 in 1997 to 36 in 2007 (Farber 2007c). To describe the number and distribution of known salamander locations, we obtained location data from Federal and State agencies and private timber companies and combined them into a single GIS layer. Because of variability in methods used by various agencies to delineate individual locations (many locations were clumped less than 328 ft (100 m) apart), we evaluated the proximity of adjacent locations and retained only locations greater than 328 ft (100 m) apart, to minimize the inclusion of multiple records at discrete locations. The resulting numbers are intended to represent individual populations, but likely still contain multiple records from large habitat patches and likely differ from previous estimates based on dissimilar mapping methods.

Within each of the genetic subunits in the Siskiyou Mountains salamander Complex, the number of locations with individuals that have been genetically confirmed to the species level is much smaller than the overall number of known locations. For example, the estimated range of the Scott Bar salamander is defined on the basis of 23 genetically confirmed locations from the samples of Mahoney, Mead, and DeGross; however, the defined range of the species contains 98 additional salamander locations previously attributed to the Grider salamander. Because populations of the two species tend not to overlap (Mead 2006, p. 10), it is reasonable to conclude that all salamander detections within what is now known to be the range of the Scott Bar salamander are Scott Bar salamanders. For the purposes of this finding, we used the total number of individual locations within each species' range, recognizing that ongoing genetic studies may modify the boundaries of these subunits, and therefore the number of known individual sites within each genetic subgroup.

TABLE 2.—NUMBER OF KNOWN LOCATIONS AND PERCENT OF TOTAL KNOWN SISKIYOU MOUNTAINS SALAMANDERS (SMS) AND SCOTT BAR SALAMANDERS (SBS) ON FEDERAL AND PRIVATE LANDS

	Applegate SMS	Grider SMS	Scott Bar salamander [1]	SMS–SBS complex
Federal lands	376 (85%)	74 (97%)	69 (60%)	519 (82%)
Private Lands	64 (14%)	2 (3%)	46 (40%)	112 (18%)
Total	440	76	115	631

[1] Number of known *Plethodon* sp. locations within the presumed range of the Scott Bar salamander.

Density

Population densities for the Siskiyou Mountains salamander Complex are poorly known. Estimation of population density for these salamanders is hindered by low detectability and highly variable environmental or habitat conditions during surveys (Nussbaum 1974, p. 15). Densities recorded during the habitat associations study conducted by Ollivier et al. (2001, p. 16) ranged from 1 to 13 animals per 527-ft^2 (49-m^2) search plot (i.e., 0.02 to 0.33 animals per m^2); whereas Nussbaum (1974, p. 16) recorded 0.53 animals per m^2 during an intensive field study. Nauman and Olson (2007, p. 19) reported an average of 0.01 salamanders per m^2 and 2.39 salamanders per person, per hour in California, with capture rates ranging from 2.83 salamanders per person, per hour at lower elevations to 1.25 salamanders per person, per hour at higher elevation sites. An inventory of all known Siskiyou Mountains salamander sites on the Applegate Ranger District in 1992 reported abundances of salamanders ranging from 0.3 to 11 salamanders per person, per hour (Olson et al. 2007, p. 13). None of these studies was designed to estimate salamander density, and mark-recapture studies that would permit estimation of density have not been conducted.

Population Trend

We were unable to locate any information describing population trends for the Scott Bar salamander or Siskiyou Mountains salamander (or either of its constituent populations). Several authors have inferred population declines based on observations of habitat modification within occupied areas (Ollivier et al. 2001, p. 5; Welsh 2005, pp. 5–7), but their study design did not support this type of inference.

Land Management

Populations of Siskiyou Mountains salamanders and Scott Bar salamanders receive an added layer of security from several conservation efforts on Federal lands. The majority of the Siskiyou Mountains salamander Complex occurs within lands administered under the provisions of the NWFP (USDA and USDI 1994) (see Table 1 above), which was established to provide an ecosystem-based management strategy for late-successional forests and the wildlife species that inhabit them (USDA and USDI 1994). The NWFP consists of two primary parts that concern salamander conservation: (1) A system of land-use allocations with associated Standards and Guidelines to guide land management; and, (2) until recently, the Survey and Manage Mitigation Measure Standards and Guidelines, which provided species-specific management guidance for certain groups of species. The NWFP Record of Decision (ROD) was implemented as amendments to all existing land and resource management plans for the Bureau of Land Management (BLM) and USFS within the range of the northern spotted owl.

Lands administered by the USFS and BLM are divided into five primary categories of land management under the NWFP: Late-successional Reserves, Congressionally Reserved Areas, Riparian Reserves, Adaptive Management Areas, and Matrix. Late-successional Reserves are established with an objective to protect and enhance conditions of late-successional and old-growth forest ecosystems, which serve as habitat for late-successional, forest-related species. Forest management activities are highly restricted within Late-successional Reserves. Congressionally Reserved Areas, such as Wilderness Areas, Wild and Scenic Rivers, and National Monuments, are incorporated into the design of the Late-successional Reserve System. Riparian Reserves provide an area along all streams, wetlands, lakes, ponds, and unstable areas where riparian-dependant resources receive primary management emphasis. Maintenance of forested conditions in Riparian Reserves for shading and water quality is also expected to contribute to dispersal and breeding habitat for late-successional species. Adaptive Management Areas (AMAs) are established to develop and test new management approaches and timber harvest methods to integrate and achieve ecological and economic health, and other social objectives. Matrix lands consist of those Federal lands outside of the four other categories described above. Production of timber and other commodities is an important objective for Matrix lands. However, forests in the Matrix also provide connectivity between Late-successional Reserves and function as habitat for a variety of forest-dwelling species. The NWFP Matrix Standards and Guidelines are designed to provide for important ecological functions such as dispersal of organisms, carryover of some species from one stand to the next, and maintenance of ecologically valuable structural components such as logs, snags, and large trees. The Matrix also provides ecological diversity by providing early-successional habitat. Within Matrix, other land use allocations such as Visual Emphasis Areas, Managed Wildlife Areas, and Retention Areas carry additional restrictions on timber harvest and to some degree function as reserves.

TABLE 3.—FEDERAL LAND ALLOCATIONS WITHIN THE ESTIMATED RANGES OF THE SISKIYOU MOUNTAINS SALAMANDER (SMS) AND SCOTT BAR SALAMANDER (SBS)

	Applegate SMS	Grider SMS	Scott Bar salamander	SMS–SBS complex
Total area in ac (ha)	248,870 (100,712)	174,285 (70,529)	136,740 (55,335)	559,895 (226,578)

TABLE 3.—FEDERAL LAND ALLOCATIONS WITHIN THE ESTIMATED RANGES OF THE SISKIYOU MOUNTAINS SALAMANDER (SMS) AND SCOTT BAR SALAMANDER (SBS)—Continued

	Applegate SMS	Grider SMS	Scott Bar salamander	SMS–SBS complex
Private Lands (%)	15	9	22	15
Federal Lands (%):				
Reserves	33	73	51	50
Adaptive Management Area [1]	42	0	0	19
Matrix-retention [2]	1	13	19	9
Matrix-general forest [3]	9	5	8	7

[1] Experimental management to meet ecological, economic, and social goals.
[2] Timber harvest restricted to accommodate various other management goals.
[3] Timber production is a high priority.

Roughly 33 percent of the range of the Applegate salamander occurs within reserves (Late-successional Reserves, Wilderness, Riparian Reserves, and other land allocations withdrawn from scheduled timber harvest), 42 percent of the range within the Applegate Adaptive Management Area, 9 percent in Matrix, and 15 percent on private lands (see Table 3 above). Nearly three-quarters of the range of the Grider salamander is in reserves, and 18 percent is in Matrix; however, almost three-fourths of the Matrix is in land-use allocations (retention areas) where timber harvest is restricted (USDA 1994, pp. 4–73 to 4–176). Fifty-one percent of the Scott Bar salamander's range is in reserves, and an additional 19 percent occurs within retention areas (Wild and Scenic Rivers, Retention Visual Quality Objective). Overall, only approximately 14 percent of the range of the Applegate salamander, 24 percent of the range of the Grider salamander, and 30 percent of the range of the Scott Bar salamander are composed of Matrix-General Forest and private timberlands, where intensive timber management would be expected to occur. However, because varying levels of timber management occur within the Applegate Adaptive Management Area in the range of the Applegate salamander, up to about 66 percent of this species' range is available for various levels of timber harvest and cannot be considered to be reserve lands.

Little is known about the actual distribution of salamander populations among the land-use allocations described above. Nauman and Olson (2007) attempted to evaluate the occurrence of Grider salamanders and Scott Bar salamanders by conducting surveys at a stratified random sample of points in reserved and matrix land allocations at high (greater than 4,000 ft (1,219 m)) versus low (less than 4,000 ft (1,219 m)) elevation. They found that capture rates for these species were higher on matrix lands, likely because a higher proportion of reserved lands occur at higher elevations, which are less suitable for the species. The authors concluded that reserved land allocations may not provide adequately for conservation of the species but described a number of sampling issues (single-visit protocol, unequal sampling of strata) that may weaken this conclusion.

Survey and Manage Mitigation Measure Standards and Guidelines

In addition to the NWFP's system of land-use allocations and management standards and guidelines, specific mitigation measures were included for about 400 rare or poorly known species. We refer to this broadly as the Survey and Manage Program. The Survey and Manage Program contains an adaptive management provision, establishing the Species Review Process wherein species experts (''taxa teams'') evaluate and synthesize the latest information about each species. Reports from the taxa teams are then used by the agencies to propose changes to management of these taxa, as appropriate. The Siskiyou Mountains salamander was included in the original list of Survey and Manage species under Survey Strategies 1 and 2 (USDA and USDI 1994, pp. C–59, C–45). Survey and Manage guidelines for these salamanders required that known salamander sites be managed via protection buffers (Strategy 1), and that surveys be conducted prior to ground-disturbing activities such as timber harvest (Strategy 2). Protection buffer standards and guidelines for Siskiyou Mountains salamanders required the retention of all overstory trees within a buffer of at least the height of one site-potential tree or 100 feet horizontal distance, whichever is greater, surrounding the location. As a result of the 1999 Species Review Process, the Siskiyou Mountains salamander was reclassified as a Category C species in the Final Supplemental Environmental Impact Statement (FSEIS) for the NWFP (USDA and USDI 2000, Appendix F; p. 101). Criteria for including a taxon in Category C are: (1) There is not a high concern for persistence; (2) it is likely that not all known sites are necessary for reasonable assurance of persistence of the taxon; (3) the taxon is uncommon (as opposed to rare); and (4) pre-disturbance surveys are required until a population network is established. The management objective for the Siskiyou Mountains salamander under Category C is to identify and manage high-priority sites to provide for reasonable assurance of persistence. The current status of the Siskiyou Mountains salamander was assigned in the March 14, 2003, Implementation of the 2002 Annual Species Review Memorandum (USDA and USDI 2003). Because of their smaller number of known sites and patchy distribution, salamander populations south of the Siskiyou Crest were assigned to Category A, requiring pre-disturbance surveys and management of protection buffers for all known sites. Northern populations were assigned to Category D. Management objectives for Category D species are to identify and manage high-priority sites to provide for a reasonable assurance of species persistence; pre-disturbance surveys are not required.

The USFS and BLM have determined to remove the Survey and Manage Program, and in July 2007 published their Record of Decision (2007 ROD) to implement this decision (see ''Summary of Factors Affecting the Species: Factor D''). Therefore, at this time, the Survey and Manage Program has been eliminated for project planning and new decisions. However, because of the lag time in implementation of the 2007 ROD, most new Federal land management decisions issued in 2008 will be compliant with the Survey and Management guidance for the Siskiyou Mountains salamander (West 2007); implementation of new projects compliant with the 2007 ROD is unlikely until 2009. We therefore view

the Survey and Manage guidelines as existing habitat management until after 2008. Unless the 2007 ROD is successfully challenged in court, project decisions after 2008 will no longer contain protections currently provided by the Survey and Manage provisions.

The Survey and Manage guidelines have provided additional security for salamander populations across the vast majority of the range of the Siskiyou Mountains salamander. With the removal of the Survey and Manage Guidelines under the 2007 ROD, management of these species will be based on the USFS's Special Status Species Program and the BLM's Sensitive Species Program (Hughes 2007). The Special Status Species and Sensitive Species programs are anticipated to provide less stringent protections than those in the Survey and Manage Program; however, they include provisions for development of Conservation Strategies and Conservation Agreements.

Based on ecological and management information in the Annual Species Reviews and strategic surveys, the taxa team joined with additional species experts to formalize the Survey and Manage Program objectives for Siskiyou Mountains salamander. In anticipation of the eventual removal of the Survey and Manage Program, they developed their management recommendations into a Conservation Strategy for Siskiyou Mountains Salamanders in the Northern Portion of the Range (Olson et al. 2007). The USFS and BLM committed to implement this Conservation Strategy in the August 16, 2007, Conservation Agreement for the Siskiyou Mountains Salamander (*Plethodon stormi*) in Jackson and Josephine Counties of southwest Oregon and in Siskiyou County of northern California (USDA and USDI 2007; USDI 2007b).

In accordance with management objectives for Category D species, the Conservation Strategy relies on long-term management of a subset of known salamander sites. A panel of scientists and resource managers selected high-priority sites and considered a number of criteria including existing Federal Standards and Guidelines for the planning area, distribution and quality of habitat, known locations of salamanders, and potential risk factors such as fire hazard, road density, and land ownership. To ensure the existence of well-distributed, interacting subpopulations, these criteria were evaluated at three spatial scales: The entire Applegate River watershed, 19 smaller watersheds within the Applegate River watershed, and individual sites. Of 316 known salamander locations on Federal lands, 151 (48 percent) were included in the 110 high-priority salamander management areas selected (some management areas encompassed multiple salamander sites). Of the 110 selected sites, 44 are on BLM lands and 66 are on the Rogue River-Siskiyou National Forest. Each high-priority salamander-management site is intended to maintain a subpopulation of Siskiyou Mountains salamanders over the long term (100 years). Because habitat-disturbing activities are regulated to varying degrees across the entire NWFP area occupied by the salamanders, the scientists who developed the strategy anticipate that many additional populations will continue to persist in reserved lands and in Matrix where habitat is retained for other reasons (Olson et al. 2007, p. 21).

Each high-priority salamander-management site was evaluated for application of one of two management strategies. The first strategy focuses on maintaining habitat conditions for salamanders at the site by limiting activities that may have adverse effects on substrate, ground cover, forest condition, or microhabitat and microclimate. The second strategy allows for greater latitude in activities at the high-priority site by applying the existing National Fire Plan Fire Management Recommendations to the high-priority site. This two-tiered approach attempts to integrate the fire ecology of the area, current forest conditions, fuel loads, and proximity to populated areas while providing for the persistence of Applegate salamander populations over the long term.

The Conservation Strategy contains a rigorous risk assessment (Olson et al. 2007, p. 22 and Appendix 2), which concludes that implementation of the Strategy presents an extremely low risk to the species' persistence at the range-wide scale. This conclusion is based on evaluation of the comparative risk of losses of individuals or subpopulations due to fuels management activities versus higher risk of losses if high-intensity wildfires occur at untreated sites. Other risks posed by other forest management activities are ameliorated by the protection-buffer approach adopted from current Survey and Manage guidance. Redundancy of protected sites and a mix of protective and restoration approaches across the entire range of the Applegate salamander also act to increase the likelihood of persistence over the long term.

The Conservation Strategy was authored by four of the most published scientific experts on this species (D. Olson, D. Clayton, H. Welsh, and R. Nauman, among others), and incorporates habitat modeling and risk assessment in the evaluation of species persistence and distribution within the strategy area. The Conservation Strategy also contains provisions to support monitoring and strategic surveys to address gaps in our knowledge of the species and its conservation. Funding for these efforts is anticipated to come from the USFS and BLM's Special Status Species programs. Implementation and effectiveness of this Conservation Strategy will be reviewed every five years by BLM, USFS, and the Service. Based on these regular reviews, or significant information that may become available between the five-year reviews, the Conservation Strategy may be revised to refine the plan or address emerging issues.

In anticipation of the discontinuation of the Survey and Manage Program, biologists from the Klamath National Forest (KNF) and the Service's Yreka Fish and Wildlife Office (YFWO) are developing a Conservation Strategy to guide management of both Grider and Scott Bar salamander populations on lands administered by the KNF. This Strategy would apply to over 90 percent of the range of the Grider salamander DPS, and 78 percent of the Scott Bar salamander's range. The draft KNF Strategy does not require surveys to be conducted prior to ground-disturbing activities; instead, all suitable salamander habitat (talus substrate) is assumed to be occupied and managed for long-term persistence of salamander populations. Similar to the Conservation Strategy for Applegate salamanders (Olson et al. 2007), the draft KNF Strategy balances protection of existing suitable habitat with active management of risks such as hazardous fuels. Small habitat patches (less than 5 ac (2 ha)) and locations with high likelihood of occupancy by salamanders (lower slopes, northerly exposures) receive strict protective guidelines; whereas habitat patches on upper slopes with southerly exposures may receive fuels reduction treatments that reduce canopy closure to a limited degree.

As discussed below in Factor D, we are not relying on implementation of the Conservation Strategies in making our determination that listing the Siskiyou Mountains salamander and Scott Bar salamander is not warranted. We have included this discussion solely as background for the public and to acknowledge USFS and BLM efforts to

further reduce possible threats to the species.

Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533) and implementing regulations at 50 CFR part 424 set forth procedures for adding species to the Federal List of Endangered and Threatened Wildlife. In making this finding, we summarize below, information regarding the status and threats to this species in relation to the five factors in section 4(a)(1) of the Act. In making our 12-month finding, we considered and evaluated all scientific and commercial information in our files, including information received during the public-comment period that ended May 29, 2007.

Siskiyou Mountains Salamander

Factor A: The Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

Like other plethodontids, Siskiyou Mountains salamanders require moisture for respiration (Nussbaum et al. 1983, pp. 73, and 90). This physiological requirement limits the time during which they are active at the soil's surface to relatively brief, rainy periods in the spring and fall (Nussbaum et al. 1983, pp. 102–103; Clayton et al. 1999, p. 133). These salamanders engage in important behaviors, including foraging and breeding, during periods of surface activity (Feder 1983, p. 296). During the remainder of the year, they retreat into rocky substrates, which provide refuge from the climatic extremes of the eastern Klamath Mountains (Nussbaum et al. 1983, p. 102). Given their physiology and life histories, disturbances that reduce surface and soil moisture, relative humidity, or suitable rocky substrates may negatively affect these species. Disturbances that possibly impact Siskiyou Mountains salamanders include timber harvesting, fires, road construction, mining, and quarrying.

Effects of Timber Harvesting on Siskiyou Mountains Salamanders

Timber harvesting may impact Siskiyou Mountains salamander by killing individuals or by reducing habitat quality. Ollivier et al. (2001, pp. 41–42) and Welsh et al. (2007a, p. 28) found that Siskiyou Mountains salamanders were associated with characteristics found in mature forests, such as dense canopy cover, large-diameter trees, and mossy ground cover. Other studies have shown that Siskiyou Mountains salamanders occur within a wide range of forest conditions, including in recently clear-cut sites and in open-canopy forest (e.g., Bull et al. 2006, p. 24; Farber et al. 2001, p. 13; Farber 2007, p. 3). The conclusions of these studies do not necessarily conflict since it is possible that these salamanders occur within a wide range of habitat conditions while selectively using or receiving greater fitness from a subset of them, or are more easily detected in a subset of them. Alternatively, these species may select habitat based on attributes that are not dependent on forest age or structural class. For example, they may select habitat with cool, moist microclimates, which are common in mature forests but also occur under other conditions (e.g., in deep drainages or on north-facing slopes). The paucity of rigorous scientific information about Siskiyou Mountains salamanders makes an accurate evaluation of their habitat associations (see Habitat Associations section above) and sensitivities to timber harvesting difficult. Information about the effects of timber harvesting on this species is currently limited to inferences based on the physiology of this species, two studies of the effects of timber harvesting on Siskiyou Mountains salamanders, and extrapolation of inferences from studies of the effects of timber harvesting on other species of plethodontid salamanders.

Timber harvesting may negatively affect Siskiyou Mountains salamander by reducing soil moisture and increasing soil temperature. Studies by Chen et al. (1993, pp. 233–234; 1995, pp. 77–82; 1999, pp. 292–294) in Pacific Northwest Douglas fir forests found that both soil and air were drier and warmer in clear cuts and clear-cut forest edges than in adjacent old-growth forest. These results indirectly suggest that clear-cutting may negatively affect these animals. We are not aware of any studies on the effects of other silvicultural techniques on forest microclimates. However, alternative even-age harvesting techniques (shelterwood and seed-tree cuts), uneven-age harvesting (single tree and group selection harvesting), and thinning retain more canopy cover than does clear-cutting and, therefore, probably have lower impacts on forest microclimates. The effects of timber harvesting also strongly depend on the silvicultural prescription (e.g., the volume of wood removed and the size, volume, and distribution of retained trees, snags, and logs) and on site-specific factors (e.g., climate and slope aspect). We expect that the effects of silviculture on Siskiyou Mountains salamander depend primarily on the intensity and scale of the disturbance.

We are aware of two studies analyzing the effects of timber harvesting on Siskiyou Mountain salamanders. The first was conducted in Siskiyou County, California by the USFS (D. Clayton, cited in Bull et al. 2006, p. 21; Olson et al. 2007, p. 16). This study compared abundances of Siskiyou Mountains salamanders through time at a clear-cut site and an adjacent selectively cut site. In the clear-cut site, the researchers found 40 salamanders (10 salamanders per person, per hour) the spring after the harvest, one juvenile the following year, no animals in the subsequent 7 years, and one juvenile during an opportunistic survey in the tenth year. In comparison, they consistently found 3 to 6 salamanders per person, per hour in the selectively cut site during the same years sampled (Bull et al. 2006, p. 21). The CDFG resurveyed the same clear-cut site in the spring and fall of the eleventh year post-harvest (Bull et al. 2006, p. 21). Single surveyors found 10.6 salamanders per person, per hour in the spring and 4.25 salamanders per person, per hour in the fall. This result suggests that, while Siskiyou Mountains salamanders may be negatively impacted by intensive timber management practices such as clear-cutting, they are able to recover in, or recolonize, some clear-cuts as vegetation recovers. As importantly, less intensive harvest methods may have less impact on salamander abundance. However, inferences from both sets of surveys are highly limited because the surveys did not include pre-harvest data and were conducted in only one pair of plots.

In a nearby area, Fruit Growers Supply Company monitored Siskiyou Mountains salamanders on the Elliot Fly Timber Harvesting Plan. They monitored salamanders on 39 plots (35 harvested and 4 controls). The harvesting method was a selective cut, and logs were removed by helicopter, a method which significantly reduces the amount of ground disturbance. Plots were surveyed prior to harvest, 1 year post-harvest, and 10 years post-harvest (Taylor 2007, p. 1). Estimates of relative abundance (count data) in the harvested plots ranged from 1.8 to 2.0 captures per survey compared to 2.0 to 3.2 captures per survey in unharvested controls, and did not significantly change during the study. These results suggest that the harvest did not significantly adversely affect the salamanders (Taylor 2007, p. 3). The determination of no significant difference between treatments and control plots was likely influenced by the high variability observed within and

between plots. All Siskiyou Mountains salamander life stages were found in the harvested plots, likely indicating that these populations continued to reproduce following harvesting. Although this study used a more rigorous design and was larger than the nearby USFS paired-plot study, its inferences are also limited because pre-harvest data were only collected one year prior to harvest and the study plots were not randomly selected.

All life-history stages of Siskiyou Mountains salamander, including gravid females (carrying eggs), have been found in open-canopy forest and recent clear-cuts (Farber et al. 2001, p. 13; Bull et al. 2006, p. 24; Farber 2007, p. 3). However, little is known about relationships between forest conditions and the population dynamics of the Siskiyou Mountains salamander. Welsh et al. (2007b) analyzed relationships between forest age class and the age structure and body condition of both Siskiyou Mountains salamanders and Scott Bar salamanders. All salamander age classes were found in pre-canopy (0 to 33 years) sites, but 8 of 11 individuals detected in those sites were juveniles or subadults. If representative of population age structure, this observation could indicate that pre-canopy sites function as 'sink' or dispersal habitat for non-reproductive individuals. Alternatively, high proportions of juveniles could indicate high reproductive rates and population recovery following logging. Sample sizes were too small to test these hypotheses. Welsh et al. (2007b) also found that Siskiyou Mountains salamanders in mature (100 to 199 years) sites had significantly higher median body condition (ratio of body mass to length) than those in young sites (31 to 99 years). This could indicate that young forest stands provide lower quality habitat than mature stands.

Timber harvesting could also affect Siskiyou Mountains salamanders at spatial scales larger than individual salamander sites. The petition to list the Siskiyou Mountains salamander (Center for Biological Diversity et al. 2004, p. 8) asserts that timber harvesting creates gaps in the distribution of this species because it is rarely able to recolonize habitat after local populations are extirpated. Indirectly supporting this hypothesis, studies of the closely related Del Norte salamander showed that it is highly sedentary and, therefore, likely to have limited dispersal abilities. Welsh and Lind (1992, p. 427) reported that the longest movement by an individual Del Norte salamander was 119 ft (36.2 m) over 6 months, and Lowe (2001, p. 27) found that the longest movement was 129.9 ft (39.6 m) over 2 years. Average movements were substantially smaller than these: 22 ft (6.7 m) over 2 years (Lowe 2001, p. 27) and 16.7 ft (5.1 m) over 6 months (Karraker and Welsh 2006, p. 136). Siskiyou Mountains salamanders, and in particular Scott Bar salamanders, have relatively longer limbs than Del Norte salamanders and may be capable of longer movements, but their dispersal abilities are still likely limited. Some researchers have suggested that dispersing juvenile Siskiyou Mountains salamanders readily colonize logged sites (Welsh 2005, pp. 1–2) and road cutbanks (Nussbaum 1974, p. 13). Alternatively, it is possible that salamanders in regenerating logged sites and road cutbanks are indicative of population persistence and recovery following disturbance, rather than extirpation and subsequent recolonization.

Welsh and Ollivier (1995, pp. 8–9) suggested that tractor yarding of logs during timber harvesting may impact Siskiyou Mountains salamanders by compacting, breaking, or realigning talus. If tractor yarding has these effects, it could reduce the interstitial spaces in talus and thereby reduce habitat quality for these species. Although it is reasonable to conclude that tractor yarding may disturb talus substrates, research has not demonstrated how this affects salamander populations.

In summary, rigorous research of the effects of timber harvesting on Siskiyou Mountains salamanders is needed, but intensive timber harvesting practices, such as clear-cutting and tractor yarding, appear to have negative short-term (30 years or less) effects on abundance, population structure, and body condition of these species (Welsh et al. 2007b). Intensive timber harvesting likely affects these salamanders by changing forest characteristics that influence microclimates for them, for example, by opening the forest overstory and understory canopies and reducing coverage of down wood and leaf litter. Despite these effects, it is also clear that the salamanders frequently persist in intensively harvested habitats, and there is no information suggesting that populations are permanently extirpated by timber harvest. It is unknown whether these salamanders may be temporarily extirpated from severely disturbed sites or simply retreat underground during the initial period of post-disturbance recovery. Alternative silvicultural techniques, such as thinning, selective harvesting, and helicopter yarding, appear to be less harmful to these salamanders than more intensive harvesting methods.

Timber Harvesting Effects on Other Plethodontids

To support their assertion that the Siskiyou Mountains salamander is threatened by timber harvesting, the petitioners cite studies of other closely related species. Most studies of the closely related Del Norte salamander indicate that this salamander is more abundant in mature forest than in other forest age classes (Raphael 1988, p. 27; Welsh and Lind 1991, p. 400; Welsh and Lind 1995, p. 208). In contrast, Diller and Wallace (1994, p. 316) did not detect a relationship between forest age and the presence of Del Norte salamanders near the northern California coast. It is possible that forest structural characteristics (e.g., canopy cover) more strongly influence microclimates for salamanders in the interior of the Klamath Mountains than near the coast, where temperatures are more moderate and moisture is less limiting.

Karraker and Welsh (2006, p. 137) found lower abundances of Del Norte salamanders in clear-cuts than in mature stands. All salamander life stages were observed in clear-cuts, indicating that reproduction was occurring in them. Abundances were similar in commercially thinned and mature stands. Welsh et al. (2007b) found significant positive relationships between forest age class and presence and abundance of Del Norte salamanders. Adult salamanders accounted for a larger proportion of individuals observed in old-growth (older than 200 years) and mature (100 to 199 years) stands than they did in young (31 to 99 years) stands. The authors suggested that higher proportions of adult salamanders are indicative of greater population stability for this species. In contrast, salamanders at pre-canopy (0 to 33 years), young, and old-growth sites had higher median body condition than those in mature stands or the reference site (thought to be a high-quality site). The authors speculated that the apparent inconsistencies in their results were related to greater competition and poorer body condition in sites with higher salamander abundances, but more research is needed to test this hypothesis. Biek et al. (2002, p. 137) found similar abundances of Del Norte salamanders in clear-cuts and mature forests in Oregon, apparently contradicting the results of the studies discussed above.

Evaluation of studies of the effects of timber harvesting on plethodontids outside the *Plethodon elongatus* Complex may improve our

understanding of the effects of harvesting on Siskiyou Mountains salamanders. However, these studies should be cautiously considered due to differences in the natural histories of these species. Most plethodontids occupy soil, surface litter, and woody debris in mesic environments (e.g., where it frequently rains during summer), whereas Siskiyou Mountains salamanders occupy talus substrates, which provide refuge from the temperature extremes and dry conditions that characterize the eastern Klamath Mountains.

Grialou et al. (2000, pp. 108–110) found that western red-backed salamanders in mesic forests in southwestern Washington occupied recent clear-cuts (2 to 4 years post-harvest) but at significantly lower abundances than in adjacent older stands. Body sizes of salamanders (subadults and juveniles) were smaller the year after harvesting but were normal by the second year. Gravid females were captured on clear-cut plots before and after harvest. Grialou et al. (2000, p. 111) suggested that reduced abundances of western red-backed salamanders in clear-cuts were related to soil compaction, loss of woody debris, and decreased leaf litter cover associated with harvesting. Bury and Corn (1988, p. 171) reported plethodontid salamanders to be absent in four clear-cut study sites, but their results were equivocal because detection rates were very low in all of the habitats studied. In contrast to the above studies, Corn and Bury (1991, p. 311) found that abundances of western red-backed salamanders were not significantly different in recent clear-cuts (less than 10 years old) and old-growth forest.

Studies of plethodontids in the mid-western and eastern United States (Ash 1997, p. 985; deMaynadier and Hunter 1998, pp. 344–345; Herbeck and Larsen 1999, p. 626) and western Canada (Dupuis et al. 1995, p. 648) indicated that clear-cutting can have significant short-term impacts on plethodontid salamander abundance. Dupuis et al. (1995, p. 648), Ash (1997, p. 987), and Herbeck and Larsen (1999, p. 626) reported that plethodontid salamanders were frequently absent from 2- to 5-year-old clear-cut stands. However, the impact of clear-cutting on these salamanders may be temporary, as one study (Ash 1997, pp. 985–986) showed that salamanders returned to clear-cut areas 4 to 6 years after cutting, and their return was followed by rapid increases in their numbers. Statistical modeling of salamander abundances on clear-cut plots indicated that salamanders would equal or exceed numbers on forested plots by 20 to 24 years after cutting (Ash 1997, pp. 985–986). Knapp et al. (2003, pp. 754–758) used a randomized, replicated design to quantify plethodontid salamander populations on harvested timberlands of the Appalachian Mountains in Virginia and West Virginia. While salamander abundances were lower in clear-cuts than in control plots, there were no differences in the proportion of gravid females or in the average number of eggs in gravid females. Moreover, there were no differences in the proportion of juvenile animals, except in one plethodontid species, which had a higher proportion of juveniles in uncut treatments.

Extent of Timber Harvesting Within the Range of the Siskiyou Mountains Salamander

Evaluation of the threat potentially posed by modification or loss of habitat via timber harvest must be based on an assessment of the biological mechanisms involved, as well as quantification of the likelihood of those mechanisms occurring to an extent and magnitude reasonably expected to result in the threat of extinction. The extent and magnitude of potential effects caused by timber harvest are strongly influenced by existing land management regulations on the majority of the species' ranges. Approximately 85 percent of the range of the Siskiyou Mountains salamander occurs on Federal lands managed under the NWFP (USDA and USDI 1994) (see Table 3 above). In general the system of reserves and management guidelines provided by the NWFP provide a substantial reduction in the likelihood of widespread habitat alteration due to timber harvesting.

The rate and extent of timber harvest has declined dramatically on Federal lands within the NWFP area during the past 30 years (USDA and USDI 2005), particularly on the Klamath National Forest, which comprises roughly 91 percent of the range of the Grider salamander. These reductions have been primarily due to the implementation of the NWFP and other Federal land management regulations. During the 6-year period from 2000 to 2005, the Klamath National Forest sold and removed an average of 15.9 million board feet of timber annually, compared with 187.8 million board feet per year during 1985 to 1990 (inclusive), and 238.2 million board feet per year from 1979 to 1984; this marks a reduction of roughly 93 percent from the 1979 to 1984 period (USDA 2006a). Perhaps more importantly, the amount of intensive timber management (regeneration harvests, overstory removal) has declined sharply, from an average of 3,733 ac per year from 1988 to 1991, to 38 ac per year from 2000 to 2006. Intensive harvest prescriptions such as clear-cutting were not used in 2001 or 2002, nor in 2004 to 2006 (USDA 2007b). Likewise, timber harvest on the Rogue River National Forest (which comprises roughly 66 percent of the range of the Applegate Population of the Siskiyou Mountains salamander (Clayton 2007b) declined by 96 percent during the last 30 years. Annual timber harvest during the 1980s averaged 182 million board feet, compared with 8 million board feet per year from 2000 to 2006 (USDA 2007c). Since 1996, only one timber sale has been sold and harvested on the Rogue River National Forest's Applegate Ranger District. Timber harvest, particularly intensive harvest methods, has also declined dramatically on lands administered by the BLM within the range of Applegate salamander. Mean annual harvest on the BLM's Ashland Resource Area have declined from 2,240 ac (907 ha) per year between 1995 and 2000, to 664 ac (269 ha) per year between 2001 and 2007 (USDI 2007a). Less than 270 ac (109 ha) per year have been harvested since 2003 (USDI 2007a). Intensive harvest methods, such as clear-cuts and shelterwood harvests, have declined from 54 percent of acres harvested in the mid-1990s, to less than 1 percent of the annual harvest since 2001. The implementation of the NWFP and subsequent declines in timber harvest levels on Federal lands, particularly intensive harvests thought to potentially affect salamanders, greatly reduces the likelihood that a substantial proportion of the salamanders' populations will be affected by logging. We anticipate that reduced levels of timber harvest will continue into the foreseeable future because this has been the trend for the last 30 years and we have no substantial information that indicates that this trend will be reversed in the foreseeable future. In addition, the essential goals of the NWFP remain in effect and we have no information that would lead us to anticipate changes to the overall goals of this ecosystem management strategy. The removal of the Survey and Manage guidelines is relevant only to occupied salamander sites that overlap with Federal forest management projects; this comprises a very small fraction of the NWFP area and will have an insignificant effect on the overall levels of timber harvest within the range of the Siskiyou Mountains salamander.

Intensive timber harvest methods such as clear-cutting are extremely limited in extent on Federal lands within the ranges of these salamanders, but where they occur they may reasonably be expected to have negative impacts on salamander populations. The available evidence does not demonstrate that the less-intensive harvest methods commonly employed on Federal lands have had substantial impacts to salamander populations, and we do not anticipate such impacts in the future. However, we acknowledge that the relationship between degree of management intensity and effects to salamanders requires further investigation.

Intensive timber harvesting practices on private timberlands affect only 10 percent of the Siskiyou Mountains salamander's range. The majority of private lands within the salamander's range occur as small parcels (typically one square mile or less) in a checkerboard pattern surrounded by Federal lands. Salamander populations on private lands may be negatively affected by timber harvesting but are dispersed among populations on Federal lands where management is more favorable. This acts to maintain redundancy, distribution, and connectivity among Siskiyou Mountains salamander populations within the mix of Federal and private lands. In addition, surveys and monitoring of Siskiyou Mountains salamanders on private timberlands demonstrate that numerous populations of Siskiyou Mountains salamanders continue to exist post-harvest and some exhibit evidence of normal population structure (Farber et al. 2001, p. 13; Bull et al. 2006, p. 24; Farber 2007, p. 3), indicating that extirpation of salamander populations on harvested private timberlands is not a substantial threat to the species.

Wildfire

Wildfire is thought to be a potential threat to Siskiyou Mountains salamander habitat (Olson et al. 2007, pp. 15, 25–26). Fire suppression and logging have altered forest structure and increased fuel loading in much of the Klamath-Siskiyou region (Skinner et al. 2006, pp. 178–179). Fire regimes within the ranges of the species have largely shifted from frequent, low-to-moderate or mixed-severity fires to less frequent, more severe fires (Agee 1993, pp. 388–389; Taylor and Skinner 1998, p. 298; USDA 1999, pp. 2–76 and 2–82; Skinner et al. 2006, p. 191). However, debate exists concerning the extent to which this effect is operating in the Klamath and Siskiyou Mountains (Odion et al. 2004, pp. 933–934). Climate changes associated with global warming are expected to increase the frequency of large, severe fires in this region (see Factor E discussion below). However, fire modeling suggests that the level of tree mortality would be highly variable within the geographic ranges of these species (USDA 1999, pp. 2–76 and 2–82; Suzuki and Olson 2007, p. 8), resulting in a mosaic pattern of habitat effects. Similar mosaics of effects have been documented for large fires in other regions (e.g., Eberhart and Woodard 1987, pp. 1207–1212). In addition, the talus outcrops inhabited by these salamanders may modify the behavior of fire (e.g., Major 2005, p. 95) by acting as minor fuel breaks and influencing the mosaic of burned and unburned areas.

The direct effects of fire on these species are unknown but interstitial spaces in deeper talus habitat likely provide underground refugia for these salamanders during fires (DeGross and Bury 2007, p. 7). In addition, wildfires typically burn during the dry summer and fall months when the salamanders are not on the surface; the period of surface activity coincides with wet climatic conditions prohibitive to wildfire.

The indirect effects of fire on these species are also unknown. Severe wildfires, by definition, remove or significantly reduce canopy cover; consume moss, duff, and forest litter; and may sterilize surface soil layers. Siskiyou Mountains salamanders occasionally use woody debris as cover during surface activity, and canopy and leaf litter cover may influence habitat quality for them (see Habitat Associations section), so these habitat changes likely affect salamanders during some period of post-fire recovery.

We are unaware of any studies of the effects of prescribed burning on Siskiyou Mountains salamanders. Prescribed fires are usually applied in the spring or fall, when moisture levels minimize the risk of damage to mature trees and unacceptable spreading of fire. Moisture levels during periods of surface activity by these species are higher than those that are appropriate for prescribed burning, so the risk of direct mortality during prescribed fires is likely low. Prescribed fires could temporarily reduce the quality of habitat for these species by consuming understory vegetation, down wood, litter, and duff. Conversely, the benefits of prescribed fires may outweigh their costs to salamanders in some areas by reducing the risk of severe wildfires.

Roads and Road Construction

Research suggests that forest roads may significantly restrict movements and local abundances of plethodontid salamanders (deMaynadier and Hunter 2000, pp. 63–64; Marsh et al. 2005, p. 2006; Semlitsch et al. 2007, p. 159). Forest roads may reduce dispersal by salamanders, leading to lower gene flow and reduced long-term persistence of populations (Marsh et al. 2005, p. 2007). Conversely, Nussbaum (1974, p. 13) found numerous salamander locations within road cuts, and suggested that the road construction provided habitat in the form of newly exposed fissured rock, or at least did not render the adjacent habitat unsuitable. Within the ranges of the Siskiyou Mountains salamander, roads are typically constructed for access to timber harvest operations. While road densities are high in some areas within the ranges of the salamanders (USDA 1999, pp. 2–31), the amount of road construction activity has declined sharply as timber harvest levels have dropped. Road decommissioning projects may have short-term localized effects to rock substrates, but are designed to re-create a natural substrate. The small area affected by road construction and the linear nature of habitat impacts, combined with the ability of salamander populations to occupy road cuts, suggest that forest roads do not pose a significant threat to populations of Siskiyou Mountains salamanders (Olson et al. 2007, p. 17). We are not aware of any other information that suggests that the presence of roads or road construction presents a substantial threat to the Siskiyou Mountains salamander.

Mining and Rock Quarrying

Some sites occupied by the Siskiyou Mountains salamander have evidence of previous mining activity. It is unclear whether or how salamanders in those sites may have been affected by these activities. Rock quarrying could pose a greater threat to individual populations because of the potentially greater intensity of the disturbance. However, this activity occurs within an extremely small proportion of this species' range, and is unlikely to have more than localized effects (Olson et al. 2007, p. 17). We are not aware of any information that suggests that mining or rock quarrying presents a substantial threat to the Siskiyou Mountains salamander.

Summary of Factor A

While intensive timber management practices such as clear-cutting appear to

have negative impacts on the abundance of Siskiyou Mountains salamanders, this practice is severely restricted on Federal lands that constitute the vast majority of the species' range. Less intensive harvest practices appear to have relatively minor or short-term impacts to salamander abundance, and the available evidence suggests that salamander populations persist in a broad range of forest habitat conditions and under different management practices.

Current management on Federal lands under the provisions of the NWFP protects salamanders via a system of reserves and land management guidelines (see Background Information: Land Management) that dramatically reduce the likelihood of large-scale reduction of suitable or occupied habitat. Until recently, the Survey and Manage guidelines also served to protect occupied salamander sites from disturbance from management activities. In the northern portion of the range, a Conservation Strategy has been implemented that will essentially continue the Survey and Manage Protections for Applegate salamander. However, even without Survey and Manage or Conservation Strategy protections, the available evidence does not show that timber harvest practices on Federal lands, either alone or in combination with other habitat disturbing activities such as mining, road building or wildfire, have substantially reduced the habitat or range of this species or are likely to do so in the foreseeable future.

Intensive timber harvesting practices, such as clear-cutting and shelterwood removal, are more likely to occur on private timberlands. While it is reasonable to assume that abundance and population structure of Siskiyou Mountains salamander populations on private timberlands may be negatively affected by timber harvesting and other habitat disturbances, these lands constitute less than 10 percent of the species' range. Other factors combine to greatly reduce the likelihood that Siskiyou Mountains salamander populations will be threatened by management activities on private lands: (1) The majority of private lands within the species' range occur as small parcels (typically one square mile or less) in a checkerboard pattern surrounded by Federal lands; and (2) many salamander populations have persisted on private timberlands in spite of a history of timber harvest. We, therefore, conclude that timber harvesting and other management practices on private lands do not constitute a substantial threat to the Siskiyou Mountains salamander.

Wildfires are expected to occur and may reduce habitat quality for some salamander populations; however, the effects of wildfires on salamander habitat are temporary and populations appear to recover as vegetation recovers. Wildfires typically burn in a mosaic pattern of intensities, leaving a variety of habitat conditions for salamanders within burned areas.

In summary:

(1) There is no evidence that the range of the Siskiyou Mountains salamander has changed from its historical size.

(2) Despite over a century of mining, road building, and intensive timber harvest, salamander populations remain well-distributed in a wide variety of habitat conditions.

(3) Results of field studies and surveys indicate that salamander populations recover following intensive habitat disturbances.

(4) On Federal lands, which constitute the majority of this species' range, NWFP land allocations and Standards and Guidelines (excepting the Survey and Manage program) and other regulations contained in Land and Resource Management Plans provide a broad range of protections for salamander habitat.

(5) The rate and intensity of timber harvest has declined dramatically on Federal lands and there is no reliable information suggesting that harvest rates or intensity will increase substantially in the foreseeable future.

(6) While more intense harvesting may occur on private lands, these lands are patchily distributed among Federal land holdings and taken together constitute less than 10 percent of the species' range.

(7) Available evidence does not indicate that other potential habitat threats to salamanders, individually or in combination with timber harvest (i.e., wildfire, mining and rock quarrying, and road building) have resulted in, or are likely in the foreseeable future to result in, significant habitat loss that would pose a threat to salamanders.

Therefore, we conclude that the Siskiyou Mountains salamander is not now or in the foreseeable future, threatened by destruction, modification, or curtailment of its habitat or range.

Factor B: Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

We are not aware of any information that indicates overutilization for commercial, recreational, scientific, or educational purposes threatens now, or in the foreseeable future, the Siskiyou Mountains salamander across its range.

Factor C: Disease or Predation

Chytridiomycosis is a relatively recently described epidermal infection of amphibians caused by the chytrid fungus *Batrachochytrium dendrobatidis.* Chytridiomycosis has been implicated in mass mortalities, population declines, and extinctions of some amphibian species, but species appear to vary in their susceptibility to the disease (Daszak et al. 1999; Blaustein et al. 2005; Ouellet et al. 2005; Pearl et al. 2007). This disease is most likely transmitted to amphibians by contact with infected water or other amphibians (Johnson and Speare 2003, p. 922). *Batrachochytrium dendrobatidis* requires moisture for survival (Johnson and Speare 2003, p. 922) and is therefore more likely to pose a threat to aquatic amphibians than to terrestrial ones. However, a chytrid infection was recently found in a terrestrial salamander, the Jemez Mountains salamander (*Plethodon neomexicanus*), living in a wet meadow (Cummer et al. 2005, p. 248). Infected aquatic amphibians appeared to be the most likely source of transmission of the disease to this individual. Bullfrogs (*Rana catesbeiana*) infected with *B. dendrobatidis* were recently found in a pond in Trinity County, California (Bettaso and Rachwicz 2006, p. 162), so it is possible that the disease occurs, or will soon occur, within the range of the Siskiyou Mountains salamander. Nonetheless, we do not anticipate that the Siskiyou Mountains salamander will be exposed to this disease or that exposure would lead to transmission through a significant portion of its range. This species is not associated with bodies of water, occurs in a characteristically dry environment, is only active above ground for brief and intermittent periods during the year, and appears to have limited dispersal abilities. Given these restrictions, we believe that the Siskiyou Mountains salamander is unlikely to be exposed to diseased water or infected aquatic amphibians and, if infected, is unlikely to transmit the disease between populations.

The Service is not aware of any predators that potentially pose a threat to the species.

Therefore, we find disease or predation does not threaten now, or in the foreseeable future, the Siskiyou Mountains salamander across its range.

Factor D: Inadequacy of Existing Regulatory Mechanisms

To the extent that we identify possibly significant threats in the other factors, we consider under this factor

whether those threats are adequately addressed by existing regulatory mechanisms. Thus, if a threat is minor, listing may not be warranted even if existing regulatory mechanisms provide little or no protection to counter the threat.

As described above in the ''Background: Land Management'' section, habitats occupied by Siskiyou Mountains salamanders receive protection from a number of sources such as the NWFP and other Federal land management regulations. Until recently, protections for the Siskiyou Mountains salamander on Federal lands included the Survey and Manage Mitigation Measure Standards and Guidelines portion of the NWFP. On private lands in California, the species complex receives protection pursuant to the California Endangered Species Act (CESA). The future of some of these regulations (Survey and Manage Program and State Protections) is in flux.

Federal Lands

Survey and Manage Mitigation Measure Standards and Guidelines

Siskiyou Mountains salamanders and their habitat have received an additional layer of security from the Survey and Manage Mitigation Measure Standards and Guidelines (Survey and Manage Program) under the NWFP (USDA and USDI 1994). The Survey and Manage Program provided specific guidance for management of both genetic subunits of the Siskiyou Mountains salamander. Management guidance for Applegate salamander populations included identification of high-priority sites that will be managed to provide a reasonable assurance of long-term species persistence. In the southern portion of the range (Grider and Scott Bar salamanders), protections included the requirement of surveys prior to land management activities, and restrictions of habitat-altering activities such as timber harvesting at occupied sites (see ''Background: Land Management''). The USFS and BLM decided to remove the Survey and Manage Program from the NWFP, and published their ROD entitled ''To Remove or Modify the Survey and Manage Mitigation Measures Standards and Guidelines in Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl'' in March 2004 (March 2004 ROD). The FSEIS for the March 2004 ROD identified potential mitigation measures, including sensitive species programs, for species affected by the removal of the Survey and Manage Program.

In January 2006, the court in *Northwest Ecosystem Alliance* v. *Rey,* 2006 U.S. Dist. Lexis 1846 (N.D. Wash.) ordered the March 2004 ROD set aside for failure to comply with the National Environmental Policy Act. With this order, the court reinstated the 2001 Survey and Manage ROD, which had modified the original Survey and Manage Program but maintained protections for the salamanders. At the end of July 2007, the USFS and BLM issued a new ROD (2007 ROD) to remove the Survey and Manage Mitigation Measure Standards and Guidelines portion of the Northwest Forest Plan. Following issuance of the 2007 ROD, the USFS and BLM petitioned the court to lift or modify the injunction against projects that relied on the 2004 ROD. In its November 21, 2007, order, the court denied the agencies' request (*Conservation Northwest* v. *Mark E. Rey* 2007 U. S. Dist. Lexis 88541 (N. D. Wash.)), but did not rule on the sufficiency of the 2007 ROD.

With issuance of the 2007 ROD, the Survey and Manage Program has been eliminated for new project planning and decisions. However, because of the lag time in implementation of the 2007 ROD, most new Federal land management decisions issued in 2008 will be compliant with the former Survey and Management guidance for the Siskiyou Mountains salamander (West 2007); implementation of new projects compliant with the 2007 ROD is unlikely until 2009. Although judicial challenge to the removal of the Survey and Manage Program in the 2007 ROD is very likely, we assume for purposes of this finding that the Survey and Manage Program will not remain in effect in the future.

Assuming the removal of the Survey and Manage Program, management of this species will be based on the USFS's Special Status Species Program and the BLM's Sensitive Species Program (Hughes 2007). The Special Status Species and Sensitive Species programs are anticipated to provide less stringent protections than those in the Survey and Manage Program; however, they include provisions for development of conservation strategies and Conservation Agreements, which, as discussed previously under ''Land Management,'' has already occurred with regard to the Applegate salamander, and is under development for the Grider salamander and Scott Bar salamander.

It is important to note that, while the Service recognizes the added layer of security provided by Survey and Manage Protections for the Siskiyou Mountains salamander, our evaluation of the potential threats to this species does not indicate that the Survey and Manage Protections are key to the species' persistence. The petitioners cite statements in the 2004 FSEIS (USDA and USDI 2004) indicating that loss of the Survey and Manage Protections could result in gaps in the distribution of Siskiyou Mountains salamander. In addition, the Species Review Panel (USDA and USDI 2001, p. 16) concluded that ''[i]t is likely that non-protected land allocations will be required in order to ensure persistence for the species, both in the northern and southern portions of the range'' indicating that current reserves may be inadequate. We have carefully evaluated this information, and we find that these conclusions are no longer consistent with the current scientific knowledge about the Siskiyou Mountains salamander and Scott Bar salamander, because: (1) The conclusions were made based on a much smaller number of known populations (161) than what is known today (631); (2) they are based on a single unpublished habitat-associations study by Ollivier et al. (2001); and (3) they assumed extirpation of populations that experience any degree of timber harvesting. As described previously under ''Summary of Factors Affecting the Species: Factor A,'' the best available evidence indicates that Siskiyou salamanders persist in areas affected by timber harvest, and in particular, in areas subject to the less intensive harvesting methods employed on the vast majority of Federal lands that make up the species range and there is little evidence to support the speculation that the rate and intensity of timber harvest on Federal lands will increase in the foreseeable future, with or without the Survey and Manage protections.

Conservation Strategies

Conservation Strategy for the Siskiyou Mountains Salamander—Northern Portion of the Range

As discussed in detail above under the Species Information: Land Management section, in anticipation of the eventual removal of the Survey and Manage Program, a team of researchers and biologists from USFS Pacific Northwest Research Station and the Service formalized the existing Survey and Manage Category D objectives for the Siskiyou Mountains salamander in the northern portion of its range (Applegate salamander) in a Conservation Strategy (Olson et al.

2007). The USFS and BLM committed to implement this Conservation Strategy in the August 16, 2007, Conservation Agreement for the Siskiyou Mountains Salamander (*Plethodon stormi*) in Jackson and Josephine Counties of southwest Oregon and in Siskiyou County of northern California (USDA and USDI 2007; Olson et al. 2007). However, because of the limited nature of the threats addressed by the conservation Strategy, we did not rely on it in determining whether listing the Siskiyou Mountains salamander is warranted.

The petitioners (Greenwald and Curry 2007, p. 9) questioned whether the BLM will adhere to the Conservation Agreement because it is not incorporated into the proposed Western Oregon Plan Revision (WOPR) Draft Environmental Impact Statement (DEIS), a proposal to modify the NWFP land allocations and standards and guidelines on BLM lands in Oregon, which could potentially increase timber harvest levels on BLM lands within the range of the salamanders. Because we did not rely on the Conservation Strategy in reaching our determination, the petitioners' concern is not relevant. In any case, the timing of development and release of the WOPR DEIS precluded inclusion of the then-unsigned Conservation Agreement; the BLM has subsequently provided a letter to the Service clarifying the BLM's commitment to implement the Conservation Strategy regardless of the eventual outcome of the WOPR proposal (USDI 2007b).

The petitioners also question the ability of the Conservation Agreement to conserve the Siskiyou Mountains salamander because it protects only roughly half of the currently known salamander locations and allows management of fire risk at 48 locations (Greenwald and Curry 2007, pp. 10–11). Petitioners apparently assume that only the selected high-priority sites will receive any degree of protection, management guidelines designed to reduce fire risk at 48 sites will harm populations, and significant losses of Applegate salamander populations not specifically protected by the strategy are likely. Although we did not rely on the Conservation Strategy in reaching our conclusion, we note that the available information does not support these assumptions. It is unlikely that a high proportion of the non-network sites are at risk because of other protections in place. For example, many of the 289 Siskiyou Mountain salamander locations not selected for the population network fall within NWFP reserves and other areas not likely to experience intensive disturbance, and, as described above under Factor A, there is little evidence to suggest that substantial losses of populations will occur as a result of foreseeable forest management activities. The Conservation Strategy was authored by four of the most-published scientific experts on this species (D. Olson, D. Clayton, H. Welsh, and R. Nauman, among others), and incorporates habitat modeling and risk assessment in the evaluation of species persistence and distribution within the strategy area. The petitioners present no information or analysis to support their contention that the expert team somehow erred in the development of the Conservation Strategy.

The petitioners assert that the Conservation Strategy is unlikely to be effective because it contains management recommendations that appear to lack regulatory force (Greenwald and Curry 2007, p. 10) and further claim that the Conservation Strategy does not meet the standards of the Service's Policy for Evaluating Conservation Efforts (PECE) (68 FR 15100; March 28, 2003) (Greenwald and Curry 2007, p. 11). In response to the petitioners' first concern, we have no basis to conclude that the Federal parties to the Conservation Agreement will fail to comply with their own management guidance, and note that the Service will be a participant in the 5-year reviews described in the Strategy under Adaptive Management (Olson et al. 2007, p. 39–40). As described under ''Background: Land Management,'' the Conservation Strategy for the Siskiyou Mountains Salamander, Northern Portion of the Range is simply the formalization of existing Survey and Manage guidance for northern populations of Siskiyou Mountains salamanders; guidance deemed adequate by the petitioners (Center for Biological Diversity et al. 2003, p. 17) and the Survey and Manage taxa team experts.

In response to petitioners' reliance on PECE, we emphasize that application of the PECE is inappropriate here. The Service may rely on conservation efforts that meet the standards of PECE in making listing determinations. In other words, a conservation effort relied on consistent with PECE can be dispositive as to the Service's ultimate finding on the status of a species. The policy therefore requires a high level of certainty that conservation efforts will be implemented and will be effective to ameliorate threats that would otherwise warrant listing of a species. Even in the absence of the Conservation Strategy, we do not consider the threats to the Siskiyou Mountains salamander under factors A through E of Section 4(a)(1) of the Act, now or in the foreseeable future, substantial enough to warrant its listing under the Act. Therefore, although implementation of the Conservation Strategy may be beneficial for the Siskiyou salamander, we did not rely on it in making our determination that the species does not warrant listing.

Western Oregon Plan Revisions

The WOPR are a proposal by the BLM to revise six resource management plans (RMPs) that cover all BLM-administered lands in western Oregon. In August 2003, the American Forest Resource Council, the Association of Oregon and California Counties, and the Secretaries of Interior and Agriculture entered into a settlement agreement requiring the BLM to revise its RMPs to meet the mandated requirements of the Oregon and California Railroad and Coos Bay Wagon Road Grant Lands Act of 1937. In accordance with this agreement, the BLM is proposing to revise existing RMPs to replace the NWFP land-use allocations and management direction. In its August 16, 2007, DEIS for the Revision of the Western Oregon RMPs, the BLM describes three action alternatives designed to meet the purpose and need of the plan revisions, and a no-action alternative. Each of the action alternatives includes a range of management strategies; however, none of the action alternatives propose to retain NWFP late-successional reserves, and all action alternatives would result in a reduction in riparian reserve areas.

While these proposed revisions have the potential to increase timber harvesting within the range of the Siskiyou Mountains salamander, we cannot at this time predict which alternative, including the no action alternative, will be selected or evaluate the potential effects to the 11 percent of the range of the Siskiyou Mountains salamander that occurs on lands administered by BLM in Oregon.

While the potential effects of possible RMP changes on the small percentage of Siskiyou Mountains salamander's range that occurs on BLM lands are unknown, NWFP land-use allocations and management direction provides substantial protection for the Siskiyou Mountains salamander and its habitat. If existing Federal management for the Siskiyou Mountains salamander is modified in the future, the Service can consider any such changes in the context of the degree and immediacy of potential threats to the Siskiyou Mountains salamander at that time.

State Regulations

In California, the Siskiyou Mountains salamander is listed as a threatened species and receives substantial protection pursuant to CESA. On private timberlands, this protection includes a requirement for pre-project surveys and prohibitions on timber harvest in established buffers around occupied suitable habitat. In May 2005, CDFG submitted a petition to the California Fish and Game Commission to delist the Siskiyou Mountains salamander throughout its entire range in California. In August 2005, CDFG amended the petition by removing that portion of the Siskiyou Mountains salamander's range that is now known to be occupied by the recently described Scott Bar salamander. The private lands affected by the amended petition consititute only 9 percent of the known range of the Siskiyou Mountains salamander in California. The final determination on whether to delist the Siskiyou Mountains salamander was scheduled to be made at the Fish and Game Commission's January 31, 2007, meeting; however, that decision has been postponed pending completion of environmental documents. Because of controversy surrounding the proposed delisting, it is uncertain whether the existing regulatory protections will be removed in the foreseeable future. If existing State regulations are modified in the future, the Service can consider such changes in the context of the degree and immediacy of potential threats to the Siskiyou Mountains salamander at that time. However, because of the small proportion of the species' range that occurs on private lands in California, combined with evidence that Siskiyou Mountains salamander populations persist in disturbed habitats, we find that removal of CESA protections would not pose a substantial threat to the species.

No specific regulatory mechanisms to protect the Siskiyou Mountains salamander exist on the approximately seven percent of the species' range that occurs on private lands in Oregon. However, most of these lands occur as small (one square mile or less) parcels distributed in a checkerboard pattern or as isolated parcels within Federal lands where management is more favorable for salamanders and serves to maintain redundancy, distribution, and connectivity among Siskiyou Mountains salamander populations. In addition, research indicates that populations of Siskiyou Mountains salamander persist following timber harvesting and recover as vegetation is re-established (see Factor A). Therefore, the Service believes that the lack of regulatory protections on a small proportion of the species' range in Oregon does not pose a threat to the species in the foreseeable future.

Summary of Factor D

The adequacy of existing regulatory mechanisms to protect Siskiyou Mountains salamander populations must be evaluated in light of the degree of threat potentially posed by the actions being regulated. As described above under Factor A, Siskiyou Mountains salamander populations may find optimum habitat conditions in mature forest, but also occupy a wide range of forest conditions and have been shown to persist and recover following disturbances such as timber harvesting and fire. Although not specifically aimed at conservation of Siskiyou Mountains salamanders, land management guidance such as the NWFP and other regulations provide protection of salamander habitat on Federal lands which constitute the vast majority of the species' range. Although we have determined that the species does not warrant listing even in the absence of any reduction in threat resulting from implementation of the Conservation Strategy for the Siskiyou Mountains salamander (Plethodon stormi) in the Northern Portion of the Range (Olson et al. 2007), that Conservation Strategy may provide an added layer of security to the Northern Clade of Siskiyou Mountains salamander populations.

Current California regulations provide substantial protection for the Siskiyou Mountains salamander on the small percentage of the species' range in California that occurs on private lands. The California Fish and Game Commission is currently evaluating a petition to delist the Siskiyou Mountains salamander, but has not reached a decision regarding this action. However, we find that the removal of CESA protections would not pose a substantial threat to the species, because of the small proportion of the species' range that occurs on private lands in California, combined with evidence that Siskiyou Mountains salamander populations persist in disturbed habitats. Oregon does not provide regulatory protections for the Siskiyou Mountains salamander on private lands. However, private lands in Oregon comprise only seven percent of the Siskiyou Mountains salamander's entire range (both clades) and are scattered among Federal lands that compose the vast majority of the species' range.

Under Section 4(a)(1)(D) the Service must evaluate the adequacy of existing regulatory mechanisms rather than speculate about future changes to those mechanisms. With the exception of the Survey and Manage guidelines, which have been eliminated for future projects on Federal lands, we assume that the NWFP and other land management regulations will continue as existing regulatory mechanisms that provide adequate conservation of Siskiyou Mountains salamanders. If Federal or State regulatory mechanisms are modified or eliminated in the future, the Service can consider that information when evaluating the adequacy of then existing regulatory mechanisms to protect the Siskiyou Mountains salamander in the context of the degree and immediacy of potential threats to the Siskiyou Mountains salamander at that time.

In light of the ability for Siskiyou Mountains salamander populations to persist in managed landscapes, we find that existing Federal regulatory mechanisms such as the NWFP and other provisions of Federal Land and Resource Management Plans, in combination with the Federal Special Status Species programs, offer adequate protection for the Siskiyou Mountains salamander and its habitat over the vast majority of its range, and conclude that this species is not now, or in the foreseeable future, threatened by inadequate regulatory mechanisms.

Factor E: Other Natural or Manmade Factors Affecting the Continued Existence of the Species

Other natural or manmade factors that may affect the persistence of the Siskiyou Mountains salamander within all or a significant portion of its range are climate changes associated with global warming and stochastic events, which are rare, chance events, such as epidemics and large, severe wildfires.

Climate Change

There is considerable uncertainty associated with projecting future climate changes. This uncertainty is partly due to uncertainties about future emissions of greenhouse gases and to differences among climate models and simulations (Stainforth et al. 2005, pp. 403–406; Duffy et al. 2006, p. 874). We are not aware of any climate change simulations for the Klamath-Siskiyou region, but the results of numerous climate change simulations for California and the Pacific Northwest have been published (see below). Together, these simulations describe a range of plausible outcomes from increased emissions of greenhouse gases.

All studies we reviewed predicted continued increases in average surface temperatures in California and the Pacific Northwest in response to increased emissions of greenhouse gases (Leung and Ghan 1999, p. 2031; Snyder et al. 2002, p. 1; EPRI 2003, p. 95; Hayhoe et al. 2004, p. 12422; Cayan et al. 2006, p. 11; Duffy et al. 2006, p. 873; Maurer 2007, p. 317; Salathé et al. submitted, pp. 8–9). The magnitude of projected increases in annual average temperature varied widely among studies, depending on the models and emissions scenarios used, from 3 to 10.4 degrees Farenheit (°F) (1.5 to 5.8 degrees Celsius (°C)), by the year 2100 (EPRI 2003, p. 3; Hayhoe et al. 2004, p. 12423; Cayan et al. 2006, pp. 11–14; Maurer 2007, p. 317). Simulations consistently project more pronounced temperature increases in California during the summer months than during other times of the year, 3.9 to 14.9 °F (2.2 to 8.3 °C) by 2100 (Hayhoe et al. 2004, p. 12422; Cayan et al. 2006, p. 14; Maurer 2007, p. 317). Some simulations projected more rapid temperature increases at higher elevations than at lower ones (Leung and Ghan 1999, p. 2047; Salathé et al. submitted, pp. 10–12). Most researchers attributed this difference to a snow-albedo feedback effect; this occurs when increased surface temperatures cause earlier and faster snow melt, which, in turn, allows more absorption of heat by the ground and further increases in surface temperatures.

Increased average surface temperatures could cause soils used by Siskiyou Mountains salamanders to become warmer, and possibly drier, during the dry season. If this occurs, it could negatively affect these species because they are associated with cool, moist soil conditions (see Habitat Associations above). However, we expect that the Siskiyou Mountains salamanders will be somewhat buffered from changes to soil surface conditions because they are primarily active below ground during the dry season. Salamanders at shallow sites may be more negatively affected by drying and heating of the soil surface than those at deeper sites since they will be less able to respond to changing soil microclimates with vertical movements. Increased surface temperatures could have unpredictable indirect effects on these species: For example, through effects on vegetation, disturbance regimes, competitors, predators, or prey.

Reviews of a large number and variety of climate change simulations found that projected changes to precipitation in California were highly variable but clustered around no change or a slight increase in annual precipitation (Cayan et al. 2006, p. 17; Maurer 2007, p. 317). Warming temperatures are consistently projected to increase the proportion of precipitation that falls as rain rather than as snow in California and the Pacific Northwest (Leung and Ghan 1999, p. 2041; Snyder et al. 2002, p. 3; Hayhoe et al. 2004, p. 12425; Cayan et al. 2006, p. 31; Maurer 2007, p. 319). Earlier and more rapid snowmelt and decreases in the proportion of precipitation that falls as snow are expected to cause declines in spring snowpacks (Hayhoe et al. 2004, p. 12422; Cayan et al. 2006, p. 31; Maurer 2007, p. 309). Declines in spring snowpacks have already occurred in some areas and are correlated with global warming trends (Mote 2003, pp. 1–4). Some areas will experience increased cloud cover as surface temperatures continue to increase (Croke et al. 1999, pp. 2128–2134). One model projected a greater increase in low cloud cover during spring in the Pacific Northwest, especially near the coast (Salathé et al. submitted, pp. 14–16).

Lower proportions of snow versus rain and earlier and faster snowmelt could enable the Siskiyou Mountains salamanders to become surface active earlier in the spring. We currently do not know whether or how a shift in the timing of surface activity might affect the viability of these species. Little is known about the physiological sensitivities of the Siskiyou Mountains salamanders to temperature, but an increase in spring cloud cover could directly benefit them by moderating daily temperature ranges during their periods of surface activity. Superficially, increased precipitation might also directly benefit the species, while decreased precipitation might negatively affect it. For example, changes to the timing and amount of precipitation could alter the length or frequency of the species' periods of surface activity or the size or location of its geographic range. Changes to cloud cover or the amounts, timing, and form of precipitation could also have complex indirect effects on the species; for example, through influences on vegetation, disturbance regimes, competitors, predators, or prey. Evaluation of the potential effects of changes to precipitation on the Siskiyou Mountains salamander should become more meaningful as emissions scenarios, climate change models, and our knowledge of these species continue to improve.

Vegetation modeling by Lenihan et al. (2003a, pp. 1–41; 2003b, pp. 1667–1681) projected that increased emissions of greenhouse gases will cause large-scale replacement of evergreen conifer forest (e.g., Douglas fir-white fir) with mixed evergreen forest (e.g., Douglas-fir-tanoak) in the Klamath-Siskiyou region. This redistribution of vegetation types is predicted to occur under conditions created by two contrasting climate change models (Lenihan et al. 2003a, pp. 23–25). Because Siskiyou Mountains salamanders already occur within mixed evergreen forest, we do not anticipate a direct negative effect to the species from this potential change. However, the species may shift its range to higher elevations, following elevational changes in climate and vegetation. Numerous indirect effects of community composition shifts on the Siskiyou Mountains salamander could occur, but the net effect of these shifts is currently impossible to predict owing to the lack of information about this species' ecology.

Despite variability in climate change simulations, consistent projections for warmer summers, reduced spring snowpacks, and earlier and more rapid snowmelt suggest that forests in California and the Pacific Northwest will experience longer fire seasons and more frequent, extensive, and severe fires in the future (Flannigan et al. 2000, pp. 221–229; Lenihan et al. 2003a, p. 18; Whitlock et al. 2003, pp. 13–14; McKenzie et al. 2004, pp. 897–898). However, inconsistent predictions for precipitation, including increased cloud cover and rainfall, make this outcome uncertain.

The Siskiyou Mountains salamander has experienced other large changes to global and regional climates during its history. For example, global temperatures during the Pliocene warm period (5 to 3 million years ago) were approximately 5.4 °F (3 °C) higher than today (Ravelo et al. 2004, p. 263). More recently, several large changes to climate, fire regimes, and vegetation occurred in the Klamath-Siskiyou region during the Holocene (approximately 12,000 years to present day) (e.g., Mohr et al. 2000). Little is known about how the Siskiyou Mountains salamander responded to prehistoric climate changes or how those responses might inform us about the impacts of future changes.

Stochastic Events

Siskiyou Mountains salamanders have relatively small geographic ranges and limited dispersal abilities. Analyses of the fossil record and of currently threatened species suggest that species with these characteristics are at a higher risk of extinction than are mobile, widely distributed species (Jablonksi

1986; Manne et al. 1999; Dynesius and Jansson 2000; Jones et al. 2003; Payne and Finnegan 2007). Stochastic (rare, chance) events such as epidemics or large, severe fires can threaten the persistence of species with restricted ranges because a single event can occur within all or a large portion of their ranges. Species that are relatively sedentary are probably less able than mobile animals to escape stochastic events and their effects, or to recolonize parts of their range where they have been extirpated. Some researchers have suggested that the Siskiyou Mountains salamander is rare and patchily distributed, which could further increase the species' risks of extinction. However, the evidence cited above suggests that this salamander is in fact well distributed within its range, that it likely occurs at high densities in some areas, and that it persists in areas that have experienced disturbances (see Range and Distribution, and Factor A).

Epidemics and large, severe fires are two kinds of stochastic events that could negatively affect populations of the Siskiyou Mountains salamander. However, these events are unlikely to threaten the persistence of the species across its range. The only lethal disease we are aware of that could behave as an epidemic in populations of this salamander is chytridiomycosis (*Batrachochytrium dendrobatidis*), but this species does not appear likely to contract this disease and the Siskiyou Mountains salamander's life history makes it unlikely that this disease would spread as an epidemic (see Factor C above). The Siskiyou Mountains salamander is probably more likely to experience large, severe wildfires than epidemics in the foreseeable future. Wildfires can occur over large areas relative to the range of the Siskiyou Mountains salamander. For example, 499,965 ac (202,329 ha) burned during the 2002 Biscuit Fire in southwestern Oregon and northwestern California, largely outside of the range of the salamanders. Approximately 44 percent of the area (219,985 ac (89,025 ha)) was severely burned (USDA and USDI 2004). In comparison, the species range of the Siskiyou Mountains salamander is 423,155 ac (171,241 ha). However, Siskiyou Mountains salamanders appear to be relatively resilient to disturbances (see Factor A above), having evolved in a region where large wildfires are characteristic. Further, past fire behavior and modeling of future fire behavior suggest that large, severe fires in this region will have a mosaic of effects, leaving unburned and lightly burned patches of suitable habitat for the species in some areas (see Factor A above).

Summary of Factor E

Uncertainty is associated with predicting future climate changes, but simulations have consistently projected continued increases in average surface temperatures, reduced spring snowpacks, and a lower proportion of precipitation falling as snow during this century. Given its physiology, this species may be strongly affected, positively or negatively, by changes to precipitation patterns. However, projections of future patterns of precipitation are highly variable for northern California and southern Oregon, precluding any reliable prediction of future effects on salamander populations.

The Siskiyou Mountains salamander has a relatively small geographic range, restricted habitat associations, and limited dispersal abilities, which could make it more vulnerable to stochastic events such as large, severe fires than species without these characteristics. Large, severe fires are also expected to increase in frequency in the Klamath-Siskiyou region due to global warming and other anthropogenic factors. However, the high variability of wildfire effects at landscape scales, coupled with the apparent ability of the species to persist and eventually recover following habitat disturbance (see Factor A above), indicates that the Siskiyou Mountains salamander has a high likelihood of persistence in the foreseeable future. In addition, land management agencies within the ranges of the salamanders are actively conducting fuels management treatments to reduce the likelihood of wide-scale catastrophic fire. The future effectiveness of these treatments is unknown, but evidence suggests that at least local reductions in fire severity will be achieved. Therefore, we conclude that the Siskiyou Mountains salamander is not now, or in the foreseeable future, threatened by the individual or cumulative effects of climate change, or stochastic events such as epidemics or large, severe wildfires across its range.

Finding

We have carefully assessed the best scientific and commercial information available regarding threats faced by the Siskiyou Mountains salamander. We have reviewed the petition, information available in our files, and all information submitted to us following our 90-day petition finding (72 FR 14750; March 29, 2007). We also consulted with recognized salamander experts and Federal land managers, and arranged for researchers to initiate field studies to assess the distribution of genetic entities within the salamander complex, and demographic response of these species to forest structure.

The petitioners' primary argument for listing the Siskiyou Mountains salamander is founded on a chain of inferences, which may be simplified into the following: (1) The salamanders are highly dependent on old growth forest conditions; (2) disturbances such as timber harvesting that modify forest structure will extirpate populations; (3) the extent and magnitude of such disturbances are sufficient to threaten the species with extinction in the immediate future; (4) therefore, highly restrictive regulatory mechanisms are critical to prevent extirpation of populations by timber harvesting or wildfire; and, finally, (5) existing regulatory mechanisms are inadequate to ameliorate the perceived threats to the species. We find that there is little evidence to support any of the five above-mentioned assertions.

The available information indicates that, while habitat conditions associated with dense mature forests may be optimal for the Siskiyou Mountains salamander, populations occupy a wide range of habitats that provide the requisite elements of shading, moisture, and cover. Salamander populations are found in a wide variety of forest conditions, including areas with evidence of past disturbances. Local abundance and fitness of populations may be negatively affected by more intensive timber harvesting and wildfires, but salamander populations appear to persist and recover as vegetation is re-established following such intense disturbances, and these intensive timber harvest practices such as clear-cutting are severely restricted on the Federal lands that constitute the majority of the species' range. Less-intensive harvest practices appear to have relatively minor or short-term impacts on salamander abundance, and there are many known populations on managed timberlands. There is no reliable evidence that indicates loss of populations or curtailment of the species' ranges has occurred.

Federal lands managed under the provisions of the NWFP comprise the majority of the Siskiyou Mountains salamander's range. The NWFP acts to protect salamanders and their habitat via a system of reserves and land management guidelines that dramatically reduce the likelihood of large-scale reduction of suitable habitat. Additional land allocations and management guidance in Federal land management planning documents

(retention areas, Roadless Areas) and the Federal agencies' Special Status Species programs provide additional layers of security against any long-term threats posed by timber harvesting or other land management activities.

Private lands comprise only about 10 percent of the species' range, and receive a relatively greater amount of timber harvesting. Currently, the Siskiyou Mountains salamander is listed under CESA and receives substantial protection on private lands in California; however, the future of these protections is uncertain. Regardless of the eventual CESA status of the species in California, habitat impacts on private land are not expected to pose a substantial threat to the Siskiyou Mountains salamander, because: (1) Private lands constitute a small minority of the species' range; (2) private lands exist in a checkerboard pattern of small (less than one square mile) parcels interspersed among Federal lands where management is more favorable and therefore, acts to maintain redundancy, distribution, and connectivity among populations within the mix of Federal and private lands; (3) salamander populations appear to persist and recover following timber harvesting; and (4) many salamander populations are known to occur on private timberlands despite a long history of timber harvesting.

Wildfires are expected to occur and may reduce habitat quality for some salamander populations; however, the effects of wildfire on salamander habitat are temporary and populations appear to recover as vegetation recovers. Wildfires in the Klamath-Siskiyou region typically burn in a mosaic pattern of intensities, leaving a variety of habitat conditions for salamanders within burned areas. We also note that Federal Federal land management agencies are actively planning and conducting fuels reduction treatments to reduce the threat of large, stand-replacing wildfires within the range of the Siskiyou Mountains salamander.

Within its relatively small range, populations of Siskiyou Mountains salamanders are well distributed, and abundance within populations can be high. There are 516 known locations for this species, and large areas supporting suitable habitat have not been surveyed. These population characteristics, combined with the species' apparent ability to persist and recover following habitat disturbance, indicate that the Siskiyou Mountains salamander is resilient to stochastic events such as large wildfires. Our evaluation of climate change modeling for the geographic area inhabited by the salamanders does not support the contention that climate change poses a substantial threat to Siskiyou Mountains salamanders. Although most of the available models predict increases in average temperatures, models were inconsistent with regard to future precipitation; increases in annual precipitation and cloud cover are a plausible outcome and could act to ameliorate any negative impacts caused by increased temperatures. It is not currently possible to forecast the specific effects of future climate on salamander populations.

Our evaluation of the threats to the Siskiyou Mountains salamander leads us to the conclusion that several factors act cumulatively to assure the continued existence of well-distributed, viable populations of this species into the foreseeable future. These are: (1) Populations are demonstrated to persist in a wide variety of habitat conditions; (2) populations appear to be somewhat resilient to habitat disturbances such as timber harvesting and fire; (3) to the extent that habitat disturbances have negative effects to salamander populations, 90 percent of the species' range is protected from substantial negative impacts by existing Federal land management regulations such as the NWFP and other regulations that provide protection for their habitat; (4) private timberlands constitute only 10 percent of the species' range, and currently support numerous salamander populations; and (5) the 516 currently known locations of this species are well-distributed spatially and large areas of suitable habitat have yet to be surveyed. Therefore, we do not find that the Siskiyou Mountains salamander is in danger of extinction (endangered) now, nor is it likely to become endangered within the foreseeable future (threatened) across its range. Therefore, listing the species range-wide as threatened or endangered under the Act is not warranted at this time.

Distinct Population Segment

As stated above, the Siskiyou Mountains salamander can be separated into two clades, the Applegate salamander and the Grider salamander and, therefore, may be considered as two distinct population segments (DPSs), if indeed, they meet the criteria to be defined as such. Section 2(16) of the Act defines ''species'' to include ''any species or subspecies of fish and wildlife or plants, and any distinct vertebrate population segment of fish or wildlife that interbreeds when mature'' (16 U.S.C. 1532 (16)). To interpret and implement the DPS provisions of the Act and Congressional guidance, the Service and the National Marine Fisheries Service (now the National Oceanic and Atmospheric Administration—Fisheries), published a Policy Regarding the Recognition of Distinct Vertebrate Population Segments in the **Federal Register** (DPS Policy) on February 7, 1996, (61 FR 4722). Under the DPS policy, three factors are considered in the decision concerning the establishment and classification of a possible DPS. These are applied similarly for additions to the list of endangered and threatened species. These factors are (1) the discreteness of a population in relation to the remainder of the species to which it belongs, (2) the significance of the population segment to the species to which it belongs, and (3) the population segment's conservation status in relation to the Act's standards for listing, delisting, or reclassification (i.e., is the population segment endangered or threatened?).

Discreteness

Citing the Services' DPS policy (61 FR 4722) and the best available information, the June 2006 petition suggests that the Siskiyou Mountains salamander can be separated into two discrete populations based on reproductive isolation. Under the DPS policy, a population segment of a vertebrate taxon may be considered discrete if it satisfies either one of the following conditions:

(1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors. Quantitative measures of genetic or morphological discontinuity may provide evidence of this separation.

(2) It is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status,or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the Act.

Phylogenetic studies of the Siskiyou Mountains salamander demonstrate that this species consists of two distinct genetic lineages: the Applegate salamander (populations within the Applegate River drainage and north of the Siskiyou Crest) and the Grider salamander (populations south of the Siskiyou Crest and adjacent to the Klamath River) (Pfrender and Titus 2001, pp. 5–6; DeGross 2004, pp. 24–44; Mahoney 2004, p. 8; Mead et al. 2005, pp. 163–166). Mead et al. (2005, p. 168) describe these lineages as ''a major phylogenetic subdivision within *P. stormi*.'' Mead et al. (2005, p. 168) estimated an average of 2.22 percent

mitochondrial DNA sequence divergence between the Applegate and Grider salamanders, compared with 11.5 percent and 11.68 percent sequence divergence between Scott Bar salamander and the Applegate and Grider salamanders, respectively. An additional genetic distinction between the two lineages is the almost complete lack of genetic variation within and among Applegate populations, likely the result of range expansion and genetic bottleneck as individuals dispersed into the southern reaches of the Applegate watershed (Pfrender and Titus 2001, pp. 5–6).

The geographic ranges occupied by the Applegate and Grider salamanders are separated by the Siskiyou Crest, a high-elevation ridge system unlikely to permit population connectivity between the groups. Analyses of mitochondrial DNA indicate that, while the ancestral lineage of the Applegate salamander originated south of the Siskiyou Crest, the two groups diverged over four million years ago (DeGross and Bury 2007, p. 3), further supporting the conclusion that the Siskiyou Crest constitutes an effective barrier between the groups.

The Applegate and Grider salamanders are markedly separated as a consequence of physical (geographic) features, and as a consequence exhibit genetic divergence as well. We, therefore, conclude that the two groups are discrete under our DPS policy.

Significance

If a population segment is considered discrete under one or more of the conditions described in our DPS policy, its biological and ecological significance will be considered in light of Congressional guidance that the authority to list DPSs be used ''sparingly'' while encouraging the conservation of genetic diversity. In making this determination, we consider available scientific evidence of the discrete population segment's importance to the taxon to which it belongs. Since precise circumstances are likely to vary considerably from case to case, the DPS policy does not describe all the classes of information that might be used in determining the biological and ecological importance of a discrete population. However, the DPS policy does provide four possible reasons why a discrete population may be significant. As specified in the DPS policy (61 FR 4722), this consideration of the population segment's significance may include, but is not limited to, the following:

(1) Persistence of the discrete population segment in an ecological setting unusual or unique to the taxon;

(2) Evidence that loss of the discrete population segment would result in a significant gap in the range of a taxon;

(3) Evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range; or

(4) Evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.

A population segment needs to satisfy only one of these criteria to be considered significant. Furthermore, the list of criteria is not exhaustive; other criteria may be used as appropriate.

The ranges and population distribution of the Applegate and Grider salamanders suggest that the loss of either group would result in a significant gap in the range of the Siskiyou Mountains salamander. The estimated ranges of the Applegate and Grider salamanders constitute about 59 percent and 41 percent, respectively, of the overall range of the Siskiyou Mountains salamander. Loss of such a substantial portion of the species' range, coupled with the dispersal barrier posed by the Siskiyou Crest, would be significant to the distribution of the species. An additional consideration is the metapopulation-level redundancy that the two groups provide each other. Climatic conditions and fire regimes differ on either side of the Siskiyou Crest, and the elevation of the Crest itself serves as a barrier to wildfires. Large-scale disturbances such as catastrophic wildfire may therefore act independently on either clade; allowing the continued persistence of the species in the event of substantial losses of one group.

The uneven distribution of genetic variation across the range of the Siskiyou Mountains salamander places a disproportionate significance on each group for the maintenance of genetic diversity in the species. The Applegate salamander exhibits a strikingly low level of genetic variation, and is divergent from the more variable Grider salamander (Pfrender and Titus 2001, pp. 5–6; Mead et al. 2005, pp. 166–169). Loss of either genetically distinct group would pose a substantial reduction in genetic diversity of Siskiyou Mountains salamander. Therefore, we consider the Applegate and Grider salamanders significant to the taxon as a whole under our DPS policy.

Conclusion of Distinct Population Segment Review

Based on the best scientific and commercial information available, as described above, we find that under our DPS policy, the Applegate and Grider salamander groups of the Siskiyou Mountains salamander are discrete and each are significant to the overall species. Because the Applegate and Grider salamanders are both discrete and significant, they warrant recognition as separate DPSs under the Act.

Since we have identified the Applegate and Grider salamanders as two separate, valid DPSs, we will evaluate each DPS with regard to its potential for listing as threatened or endangered using the five listing factors enumerated in Section 4(a) of the Act. Our evaluation of the Applegate salamander DPS follows.

Applegate Salamander Distinct Population Segment

As described above, Section 4 of the Act (16 U.S.C. 1533) and implementing regulations (50 CFR part 424) describe procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a), we may list a species on the basis of any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

An endangered species is defined by the Act, with exception, as ''any species which is in danger of extinction throughout all or a significant portion of its range.'' A threatened species is defined as ''any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' A species is defined by the Act to include ''any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.''

Factor A: The Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

Our understanding of the habitat associations of the Applegate salamander DPS, and the potential effects of habitat perturbations such as timber harvest and fire on this

salamander, is based primarily on research conducted across the range of the entire Siskiyou Mountains salamander Complex. The available information indicates that the members of the Complex have similar physiological and behavioral characteristics, and consequently similar habitat associations. This conclusion is supported by Welsh et al. (2007a, p. 31), who state that the genetic subunits of Siskiyou Mountains salamander ''do little if anything to alter their basic eco-physiological limits (e.g., Spotila 1972; Feder 1983) and consequent similar environmental requirements imposed by the plethodontid life form.'' We recognize that the range of the Applegate salamander DPS is roughly 60 percent of the area occupied by the entire Siskiyou Mountains salamander, and that the relative magnitude of effects caused by habitat perturbations may be different at this smaller spatial scale. We have incorporated these differences of scale into our analysis. Given this caveat, we believe that the potential effects of timber harvesting, fire, and other habitat perturbations on the Applegate salamander DPS are the same as those described previously for the Siskiyou Mountains salamander. To avoid redundancy, these effects are summarized below; further detail and citations may be found in the Factor A analysis for the Siskiyou Mountains salamander.

Effects of Timber Harvesting on the Applegate Salamander DPS

Rigorous research of the effects of timber harvesting on these salamanders is lacking, but the available evidence suggests that intensive timber harvest practices such as clear-cutting have a short-term (30 years) negative impact on abundance, age structure, and body condition of this DPS. However, it is also clear that the salamanders frequently persist in intensively harvested areas, and that populations recover as vegetation is re-established (Welsh et al. 2007b). There is no information indicating that populations are extirpated in intensively harvested sites. Alternative timber harvesting methods such as thinning and helicopter yarding have not been shown to have negative effects on populations of this DPS.

Extent and Magnitude of Timber Harvesting Effects on the Applegate Salamander DPS

The extent and magnitude of potential effects caused by timber harvesting are strongly limited by existing land management regulations on the majority of the range of this DPS. Approximately 85 percent of the range of the Applegate salamander DPS consists of Federal lands managed under the provisions of the NWFP; 66 percent is administered by the USFS and 19 percent by the BLM. Roughly 33 percent of the range occurs within reserves (Late-successional Reserves, Wilderness, Riparian Reserves) withdrawn from scheduled timber harvesting; 42 percent of the range is in the Applegate Adaptive Management Area; and 9 percent is in Matrix. Of the three members within the Siskiyou Mountains salamander Complex, the Applegate salamander DPS has the lowest proportion of its range protected in reserves.

The rate and intensity of timber harvesting has declined substantially on Federal lands within the range of the Applegate salamander DPS during the past 20 years. Annual timber harvesting on the Rogue River National Forest, which comprises 66 percent of the DPS range, declined from an average of 182 million board feet during the 1980s to 8 million board feet per year from 2000 to 2006, a decrease of 96 percent (USDA 2007c). The Applegate Ranger District, which comprises roughly 66 percent of the DPS range, has completed only one timber sale since 1996 (Clayton 2007b). Similarly, the rate of timber harvest has declined substantially on BLM lands within the range of the Applegate salamander DPS. Mean annual harvest on the BLM Ashland Resource Area declined from 2,240 ac (907 ha) per year between 1995 and 2000, to 664 ac (269 ha) per year between 2001 and 2007; less than 270 ac (109 ha) per year have been harvested since 2003 (USDI 2007a). The intensity of timber harvest practices on Federal lands has declined dramatically as well. For example, on the BLM's Ashland Resource Area, intensive harvest methods such as clear-cutting have declined from 54 percent of acres harvested in the mid-1990s, to less than one percent of annual harvest since 2001 (USDI 2007a). The likelihood that a substantial proportion of the Applegate salamander DPS will be affected by intensive timber harvesting is greatly reduced by the long-term declining trend in the rate and intensity of timber harvesting. The BLM's proposal to increase timber harvest levels by revising their RMPs has an uncertain outcome, and we see no reason to forecast a significant increase in timber harvest levels in the foreseeable future.

Intensive timber harvesting practices such as clear-cutting and shelterwood removal are more prevalent on private timberlands, which comprise only 15 percent of the range of the Applegate salamander DPS. Approximately 12 percent of the DPS range occurs on private timberlands in Oregon; 3 percent lies in California. The majority of private lands within the range of the Applegate salamander DPS occur as small parcels (typically one square mile or less) in a checkerboard pattern surrounded by Federal lands, or as small isolated parcels. Populations of the Applegate salamander DPS on private lands may be affected by timber harvesting but are dispersed among populations on Federal lands where management is more favorable. Since the distribution of private lands occurs within a larger matrix of Federal lands, this acts to disperse any negative impacts of timber harvesting on Applegate salamander DPS populations and maintains redundancy, distribution, and connectivity among salamander populations. Therefore, no one area within the range of the Applegate salamander DPS has significantly greater threats from timber harvesting on private lands.

Wildfire

Based on the best scientific and commercial information available, we believe the potential effects of wildfire on the Applegate salamander DPS are similar to those described previously for the Siskiyou Mountains salamander. When they occur, wildfires typically burn in a range of intensities, resulting in a mosaic of habitat effects. Intense, stand-replacing fire likely reduces habitat quality for this DPS by reducing overstory cover and consuming moss, duff and forest floor litter, thereby modifying suitable microclimate habitat. However, as shown for the effects of intensive timber harvesting, Siskiyou Mountains salamander populations appear to persist and recover as vegetation is re-established after severe habitat disturbances. The degree to which wildfires affect the viability of salamander populations is unknown, but it is likely that large-scale intense wildfires may negatively affect some populations.

The potential threat posed by wildfire to the Applegate salamander DPS was evaluated by Olson et al. (2007, p. 25, Appendix 2 p. 5). The authors combined a habitat suitability model (Reilly et al. 2007) with spatial data on various risk factors such as wildfire hazard and NWFP land use allocations into a GIS and developed a range-wide map depicting risk to persistence of salamander populations. Extensive areas of highly suitable habitat and lower fire hazard were predicted on north-facing slopes, such as the north slope of the

Siskiyou Crest (Olson et al. 2007, Appendix 2 p. 8).

While there is uncertainty concerning the potential population-level effects of wildfire on the Applegate salamander DPS, we expect that wildfires will occur and may reduce habitat quality for some salamander populations. However, the effects of wildfire are unlikely to result in widespread loss of population viability because: (1) Fires typically burn in a mosaic of effects, leaving a variety of habitat conditions for salamanders occupying burned areas; and (2) these salamanders persist in disturbed areas and recover as vegetation recovers, allowing for persistence and recovery of local salamander populations. In addition, land management agencies within the range of this DPS are actively conducting fuels management treatments to reduce the likelihood of wide-scale catastrophic fire. The future effectiveness of these treatments is unknown, but evidence suggests that at least local reductions in fire severity will be achieved.

Direct Disturbance: Roads and Road Construction, Mining, and Rock Quarrying

As described under Factor A for the Siskiyou Mountains salamander, activities that physically alter the talus substrates occupied by the Applegate salamander DPS have the potential to reduce habitat quality or remove habitat. In addition, some research suggests that forest roads may pose a barrier to these salamanders, reducing dispersal and connectivity among populations. We find that, while it may reasonably be expected that crushing or removal of talus habitat during road construction, mining, or rock quarrying could negatively affect Applegate salamander populations, these activities affect only a very small area of the DPS's range. Further, numerous records exist of the salamanders occupying road cuts and sites with historical mining activity, and the rate of road construction, which is typically associated with access for timber harvesting, has declined significantly as timber harvest levels have decreased. There is little potential for a substantial portion of Applegate salamander DPS populations to be affected by direct disturbance from road construction, mining, or rock quarrying. For these reasons, we conclude that road construction, mining and rock quarrying do not pose a substantial threat to this DPS; a conclusion echoed by species experts (Olson et al. 2007, p. 17).

Summary of Factor A

While intensive timber management practices such as clear-cutting appear to have short-term negative effects on abundance of Applegate salamanders, this practice is severely restricted on Federal lands, which constitute the majority of the DPS's range. Less-intensive harvest practices appear to have relatively minor or short-term impacts to salamander abundance, and the available evidence suggests that salamander populations persist in a broad range of forest habitat conditions and under different management practices.

Current management on Federal lands under the provisions of the NWFP protects salamander habitat via a system of reserves and management guidelines that dramatically reduce the likelihood of large-scale reduction of suitable or occupied habitat; additional Federal land management direction and the Special Status Species programs provide additional security to salamander populations on non-reserved Federal lands. Management practices on private timberlands may negatively affect some populations of the Applegate salamander DPS; however, due to the patchy distribution of private lands within the larger matrix of Federal lands, and the ability of these salamanders to persist in managed habitats, we conclude that habitat modifications on this small portion of the Applegate salamander DPS's range do not constitute a substantial threat to the DPS.

Wildfires are expected to occur and may reduce habitat quality for some salamander populations; however, the effects of wildfires on salamander habitat are temporary and populations appear to recover as vegetation recovers. Wildfires typically burn in a mosaic pattern of intensities, leaving a variety of habitat conditions for salamanders within burned areas. In addition, Federal land management agencies are planning and conducting fuels reduction treatments to reduce the threat of stand-replacing wildfires within the range of the Applegate salamander.

Although relatively undisturbed mature forests may provide optimum habitat for Applegate salamanders; these salamanders have been shown to exist in a range of habitat conditions that have experienced timber harvesting, wildfire, and other disturbances such as mining and quarrying, and evidence suggest that populations persist and recover following habitat disturbance. Intense disturbances such as clear-cutting are highly limited by current land-use regulations, and along with rock quarrying and road construction constitute a tiny fraction of the DPS's habitat. Therefore, we conclude that the Applegate salamander DPS is not now, or in the foreseeable future, threatened by destruction, modification, or curtailment of its habitat across its range.

Factor B: Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

We are not aware of any information that indicates overutilization for commercial, recreational, scientific, or educational purposes threatens the Applegate salamander DPS, now or in the foreseeable future, across its range.

Factor C: Disease or Predation

Chytridiomycosis is a relatively recently described epidermal infection of amphibians caused by the chytrid fungus *Batrachochytrium dendrobatidis*. This fungus requires moisture for survival (Johnson and Speare 2003, p. 922) and is therefore more likely to pose a threat to aquatic amphibians than to terrestrial ones. As described for the Siskiyou Mountains salamander, we do not anticipate that the Applegate salamander DPS will be exposed to this disease or that exposure would lead to transmission through significant portions of its range. Salamanders composing this DPS are not associated with bodies of water, occur in a characteristically dry environment, are only active above ground for brief and intermittent periods during the year, and appear to have limited dispersal abilities. Given these circumstances, we believe that the Applegate salamander DPS is unlikely to be exposed to diseased water or infected aquatic amphibians and, if infected, salamanders are unlikely to transmit the disease between populations.

The Service is not aware of any predators that potentially pose a threat to the species. We, therefore, conclude that the Applegate salamander DPS is not now, or in the foreseeable future, threatened by disease or predation across its range.

Factor D: Inadequacy of Existing Regulatory Mechanisms

Federal Lands

Federal lands managed under the provisions of the NWFP comprise the majority of the Applegate salamander's range. The NWFP acts to protect salamanders and their habitat via a system of reserves and land management guidelines that

dramatically reduce the likelihood of large-scale reduction of suitable habitat.

Northwest Forest Plan Survey and Manage Mitigation Measure Standards and Guidelines

The provisions and current status of the Survey and Manage Program are described under Factor D for the Siskiyou Mountains salamander. The Survey and Manage Program contains specific guidance for the Applegate salamander DPS, requiring the identification of high-priority sites that will be managed to provide a reasonable assurance of species persistence. While the Survey and Manage Program currently provides protection for the Applegate salamander DPS on Federal lands, we assume for purposes of this finding that the Survey and Management Program is eliminated for future projects on Federal lands and management of the Applegate salamander DPS will be conducted under the USFS's Special Status Species Program and the BLM's Sensitive Species Program. While these programs do not specify protections for the Applegate salamander DPS, they contain provisions for development of Conservation Strategies that provide a reasonable assurance of species persistence.

Conservation Agreements

The final Conservation Strategy for the Siskiyou Mountains Salamander, Northern Portion of the Range (Olson et al. 2007), is currently being implemented by the USFS and BLM on Federal lands occupied by the Applegate salamander DPS. The Conservation Strategy was authored by four of the most-published scientific experts on this species (D. Olson, D. Clayton, H. Welsh, and R. Nauman, among others), and incorporates habitat modeling and risk assessment in the evaluation of species persistence and distribution within the strategy area. The Conservation Strategy is described in detail in the Background section and under Factor D for the Siskiyou Mountains salamander, which is incorporated by reference here. However, because of the limited nature of the threats addressed by the Conservation Strategy, we did not rely on it in determining whether listing the Applegate salamander is warranted.

Western Oregon Plan Revisions

The BLM's proposed changes to its existing Resource Management Plans through the WOPR contain provisions that have the potential to increase timber harvesting within the range of the Applegate salamander DPS (see Factor D for Siskiyou Mountains salamander). The WOPR proposal affects only Federal lands administered by the BLM, which constitute approximately 19 percent of the range of the Applegate salamander DPS. The WOPR DEIS is currently in the public review period, and we cannot at this time predict which alternative, including the no-action alternative, will be selected or evaluate the potential effects to Applegate salamander populations on BLM lands.

While the potential effects of possible RMP changes on the 19 percent of Applegate salamander DPS' range that occurs on BLM lands are unknown, NWFP land-use allocations and management direction provides substantial protection for the DPS and its habitat. If existing Federal management for the Applegate salamander DPS is modified in the future, the Service can consider any such changes in the context of the degree and immediacy of potential threats to the DPS at that time.

Private Lands and State Regulations

Approximately 12 percent of the range of the Applegate salamander DPS occurs on private lands located in Oregon, and 3 percent occurs on private lands located in California. In Oregon, no regulatory mechanisms exist to protect this DPS on private lands. In California, the Siskiyou Mountains salamander (both Applegate and Grider populations) is listed as a threatened species and receives substantial protections pursuant to CESA. These protections include the requirement of surveys prior to project implementation and prohibitions on timber harvest in established buffers around occupied suitable habitat. There is some uncertainty concerning the future of CESA protections for Applegate salamander DPS populations on the small fraction of the DPS's range that occurs in California (see Factor D for Siskiyou Mountains salamander). Regardless of the future status of protections for the Siskiyou Mountains salamander under CESA, those protections only apply to 3 percent of the Applegate salamander DPS's range, and the potential removal of these protections will not pose a significant threat to this DPS.

As described under Factor A, we find that there is little evidence to suggest that members of the Applegate salamander DPS are extirpated by timber harvesting and other habitat disturbances. Research indicates that populations of these salamanders persist following intensive timber harvest and recover as vegetation is re-established. Less intensive harvest practices appear to have little effect on populations. Therefore, we find that the lack of regulatory protections on state lands, a limited proportion of the range of the Applegate salamander DPS, does not pose a threat to this genetic subunit in the foreseeable future.

Summary of Factor D

Existing Federal regulations currently provide substantial protection on Federal lands for the Applegate salamander DPS through the NWFP land use categories and management provisions. For the purposes of this finding, we assume that the NWFP's Survey and Manage Program, which provides additional protection for the Applegate salamander DPS, is eliminated for future projects on Federal lands within the range of the DPS. Regulatory protection for this DPS will consist of the Standards and Guidelines of the NWFP, other Federal land management regulations, and the Special status Species programs, which will continue to provide adequate protection for the DPS across the 85 percent of its range that occurs on Federal lands. While the petitioners have cited the proposed WOPR as posing a significant reduction to these protections (Greenwald and Curry 2007, p. 7), we cannot at this time speculate about what impact, if any, the proposal, if finalized in the future by BLM, may have on salamander populations or their habitat.

We find that the current Federal regulations and land management planning guidelines and the Special status Species programs provide substantial protection for the DPS across the vast majority of its range. The lack of regulatory mechanisms to protect the Applegate salamander DPS on private lands in Oregon does not pose a substantial threat because: (1) Private lands comprise a small portion of the DPS's range and are distributed in small parcels interspersed among Federal lands where management is more favorable and therefore, acts to maintain redundancy, distribution, and connectivity among populations within the mix of Federal and private lands; and (2) salamander populations have been shown to persist in managed landscapes. While there is some uncertainty concerning the future of CESA protections for Applegate salamander DPS populations in California, the potential removal of CESA protections will not pose a significant threat to the DPS due to the very small percentage of the DPS's range that occurs in the state and the interspersed pattern of private and state

lands. We, therefore, conclude that the Applegate salamander DPS is not now, or in the foreseeable future, threatened by inadequate existing regulatory mechanisms across its range.

Factor E: Other Natural or Manmade Factors Affecting the Continued Existence of the Species

Other natural or manmade factors that could potentially affect the persistence of the Applegate salamander DPS within all or significant portion of its range are climate changes associated with global warming and stochastic events, which are rare, chance events, such as epidemics and large, severe wildfires.

Climate Change

The similarities in physiology, ecology, and habitat associations between the Applegate salamander DPS and other members of the Siskiyou Mountains salamander Complex, combined with the large scales at which climate change studies are conducted, lead us to conclude that our analysis of the potential effects of climate change under Factor E for the Siskiyou Mountains salamander applies to the Applegate DPS as well. Given its physiology, this species may be strongly affected by changes to precipitation patterns. Although most of the available climate models predict increases in average temperatures, models were inconsistent with regard to future precipitation; increases in annual precipitation and cloud cover are a plausible outcome and could act to ameliorate negative impacts caused by increased temperatures. We are unable to predict the potential effects of future climate change on the Applegate salamander DPS at this time.

Stochastic Events

Like other members of the Siskiyou Mountains salamander Complex, the Applegate salamander DPS occupies a relatively small geographic range (248,870 ac (100,712 ha)) and exhibits limited dispersal abilities. These traits act to increase a species' vulnerability to stochastic (rare, chance) events such as epidemics or large, severe fires because a single event can occur within all or a large portion of the range, and individuals may be unable to escape the disturbance or recolonize habitat following extirpation. However, as described in the ''Range and Distribution'' section and Factor A for the Siskiyou Mountains salamander, current research suggests that Applegate salamanders are in fact well-distributed within their range, that they occur at high densities in some areas, and that they persist in areas that have experienced disturbances. These traits act to decrease the potential vulnerability conferred on this DPS by its small range. While it may be reasonably expected that negative effects to abundance or population structure may follow severe disturbances (as described under Factor A for the Siskiyou Mountains salamander), there is no evidence that they result in significant losses of populations.

A large wildfire that affects the majority of the range of the Applegate salamander DPS is a plausible description of a significant stochastic event. For example, 499,965 ac (202,329 ha) burned during the 2002 Biscuit Fire in southwestern Oregon and northwestern California. Approximately 44 percent of the area (219,985 ac (89,025 ha)) was severely burned (USDA and USDI 2004). In comparison, the species range of the Applegate salamander DPS is 248,870 ac (100,712 ha). Although there is evidence that fire size and intensity may have increased in the Klamath-Siskiyou region, large fires with mixed severity are characteristic of the natural disturbance regime (Odion et al. 2004, p. 933; Agee 1993, pp. 388–389) within which these salamanders have evolved. The mosaic pattern of fire effects, combined with the salamanders' ability to remain protected underground and persist during postfire vegetation recovery, indicates that the threat posed by this stochastic event is unlikely to result in large-scale extirpation of populations.

Summary of Factor E

Because of the uncertain nature of climate change predictions, particularly predictions of future precipitation patterns, we are unable to evaluate the potential for climate change to impact Applegate salamander DPS populations in the future. We find that, although stochastic events such as large wildfires may occur within a large portion of this salamanders' restricted range, Applegate salamanders appear to persist following wildfires and other disturbances, to recover as vegetation is re-established following disturbance, and have adequate numbers of well-distributed populations throughout their range to allow for persistence and viability of this DPS. We, therefore, conclude that the Applegate salamander DPS is not now, or in the foreseeable future, threatened by the individual or cumulative effects of climate change or stochastic events such as epidemics or large, severe wildfires.

Finding

We assessed the best available scientific and commercial information regarding threats faced by the Applegate salamander DPS. We have reviewed the petition, information available in our files, and information submitted to us following our 90-day petition finding (72 FR 14750; March 29, 2007). We also consulted with recognized salamander experts and Federal land managers, and arranged for researchers to initiate field studies to assess the distribution of genetic entities within the salamander complex, and demographic response of these species to forest structure.

We find little support for the petitioners' claim that the Applegate salamander DPS is threatened by habitat destruction caused by timber harvesting and wildfire, and that existing regulatory mechanisms are inadequate to protect the DPS. While the available information suggests that Applegate salamanders may be positively associated with older forest conditions, the majority of studies and available field data show the species occupying a wide range of forest conditions, including previously harvested areas. Recent research indicates that even in severely disturbed habitats, the salamanders persist and populations recover as vegetation is re-established over time. Less intensive disturbances such as forest thinning and mixed-effects wildfire appear to have minor or short-term impacts on salamander abundance. There is no reliable evidence that indicates loss of populations or curtailment of this DPS's range has occurred.

We acknowledge that intensive timber harvesting practices such as clear-cutting may have short-term negative impacts on abundance and population structure of Applegate salamanders. The extent and magnitude of such practices, however, are severely limited by a number of regulatory mechanisms and other factors operating within the salamanders' range, as evidenced by the steep decline in timber harvest levels on Federal lands that constitute 85 percent of the DPS's range. Over the past 20 years, timber harvest levels, particularly of intensive harvest methods, on Federal lands within the range of the Applegate salamander have declined by over 90 percent. Levels of timber harvesting are higher on private lands, which constitute only 15 percent of the DPS's range and occur as small parcels interspersed among Federal lands. Due to the small proportion of the range consisting of private lands, coupled with the ability of Applegate salamanders to persist in managed

landscapes, we conclude that management activities on private lands do not pose a substantial threat to this DPS.

There are a number of existing regulatory mechanisms that provide protection for Applegate salamanders and their habitats. The system of land use allocations and Standards and Guidelines of the NWFP act to limit the amount and intensity of land management activities on Federal lands, as evidenced by the dramatic decline in timber harvest levels observed since the NWFP was implemented. The Survey and Manage Mitigation Measure Standards and Guidelines are one aspect of the NWFP that has provided protection specifically to occupied salamander locations. However, we anticipate the elimination of the Survey and Manage Guidelines within the range of the Applegate salamander DPS. Federal land management agencies have implemented a Conservation Strategy founded on the Survey and Management guidelines for this DPS, to help provide for well-distributed, viable populations of Applegate salamanders over the long term. The Conservation Strategy uses an approach similar to that required by the Survey and Manage Program for this DPS (i.e., identification of a network of high-priority salamander populations for protection and management). However, because of the limited nature of the threats addressed by the Conservation Strategy, we did not rely on it in determining whether listing the Applegate salamander DPS is warranted.

The BLM's proposal to revise WOPR on 19 percent of the Applegate salamander DPS's range is in draft form and undergoing public review. We cannot reliably predict the outcome of this process or what effect, if any, any future changes to the WOPR might eventually have on salamanders or their habitat. The NWFP land-use allocations, other federal land management, and the special Status Species programs constitute existing regulatory mechanisms that currently provide substantial protection for the Applegate DPS and it habitat on Federal lands and are anticipated to continue to provide such protection in the foreseeable future. Should regulatory protections change in the future, the Service can consider such changes in the context of the degree and immediacy of potential threats to the Siskiyou Mountains salamander at that time.

Populations of Applegate salamanders are well distributed, and abundance within populations can be high. There are 440 known locations for this DPS, and many areas supporting suitable habitat have not been surveyed. These population characteristics, combined with the species' apparent ability to persist and recover following habitat disturbance, indicates that Applegate salamanders are resilient to stochastic events such as wildfire. Our evaluation of climate change modeling for the geographic area inhabited by the salamanders does not support the contention that climate change poses a threat to Applegate salamanders. While increases in average daily temperatures are reliably predicted for the Klamath-Siskiyou region, predictions regarding timing and amount of precipitation are inconsistent, precluding any meaningful evaluation of future effects to these salamanders. It is not currently possible to forecast the specific effects of future climate on salamander populations.

Our evaluation of the five listing factors does not support the contention that there are threats of sufficient imminence, intensity, or magnitude as to cause substantial threats to the DPS, losses of population distribution, or viability of the Applegate salamander DPS. Therefore, we do not find that the Applegate salamander DPS is in danger of extinction (endangered), nor is it likely to become endangered within the foreseeable future (threatened) throughout its range. Therefore listing the Applegate salamander DPS as threatened or endangered under the Act is not warranted at this time.

Grider Salamander Distinct Population Segment

Factor A: The Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

Our current knowledge of the habitat associations of the Grider salamander DPS, and the potential effects of habitat perturbations such as timber harvest and fire on this salamander, are based primarily on research conducted across the range of the entire Siskiyou Mountains salamander Complex. The members of the complex have similar physiological and behavioral characteristics, and consequently similar habitat associations. This conclusion is supported by Welsh et al. (2007a, p. 31), who state that the genetic subunits of Siskiyou Mountains salamander ''do little if anything to alter their basic eco-physiological limits (e.g., Spotila 1972; Feder 1983) and consequent similar environmental requirements imposed by the plethodontid life form.'' We recognize that the range of the Grider salamander DPS is roughly 40 percent of the area occupied by the entire Siskiyou Mountains salamander, and that the relative magnitude of effects caused by habitat perturbations may be greater at this smaller spatial scale. We have incorporated these differences of scale into our analysis. Given this caveat, we believe that the potential effects of timber harvesting, fire, and other habitat perturbations on the Grider salamander DPS are similar to those described previously for the Siskiyou Mountains salamander. To avoid redundancy, these effects are summarized below; details and citations may be found in the Factor A analysis for Siskiyou Mountains salamander.

Effects of Timber Harvesting on the Grider Salamander DPS

Although rigorous research of the effects of timber harvesting on Grider salamanders is lacking, the available evidence suggests that intensive timber harvest practices such as clear-cutting have a short-term (30 years) negative impact on abundance, age structure, and body condition of these salamanders. However, it is also clear that the salamanders frequently persist in intensively harvested areas, and that populations recover as vegetation is re-established. Alternative timber harvesting methods such as thinning and helicopter yarding have not been shown to have negative effects on populations of this DPS.

Extent and Magnitude of Timber Harvesting Effects on the Grider Salamander DPS

The extent and magnitude of potential effects caused by timber harvesting are strongly limited by existing land management regulations on the majority of the range of this DPS. Approximately 91 percent of the range of the Grider salamander DPS consists of Federal lands managed by the Klamath National Forest (KNF) under the provisions of the NWFP. Approximately 73 percent of the range occurs within reserves (Late-successional Reserves, Wilderness, Riparian Reserves) withdrawn from scheduled timber harvesting; an additional 13 percent of the range is within Matrix-retention areas where timber harvest is restricted. Less than 5 percent of the Grider salamanders' range lies within the Matrix-General Forest land allocation where intensive timber harvesting is anticipated to occur.

Primarily as a result of implementation of the NWFP, the rate and intensity of timber harvesting has declined substantially on Federal lands within the range of the Grider salamander DPS. During the period from 1979 to 1984, the KNF sold and removed an average of 238.2 million

board feet of timber per year; harvest levels declined to 187.8 million board feet per year during 1985 to 1990, and fell to 15.9 million board feet annually between 2000 and 2005; a decrease of roughly 93 percent (USDA 2006a). The proportion of intensive timber management practices such as clear-cutting and overstory removal has declined even more abruptly; from an annual average of 3,733 ac (1,511 ha) per year from 1988 to 1991 to roughly 38 ac (15.4 ha) per year during 2000 to 2006 (USDA 2007b). We conclude that the land management regulations responsible for this long-term declining trend in the rate and intensity of timber harvesting greatly reduces the likelihood that a substantial proportion of the Grider salamander DPS will be negatively affected by intensive timber harvesting.

Less than 10 percent of the Grider salamander's range consists of private timberlands where intensive timber harvesting practices such as clear-cutting and shelterwood removal are likely to occur. Virtually all of these lands are in California; only about 1 percent occurs in Oregon. The majority of private lands within the range of the Grider salamander DPS occur as small parcels (typically one square mile or less) in a checkerboard pattern surrounded by Federal lands. Salamander populations on private lands may be affected by timber harvesting but are dispersed among populations on Federal lands where management is more favorable and serves to effectively reduce the impacts of intensive private land timber harvest practices and maintain redundancy, distribution, and connectivity among Grider DPS populations.

Wildfire

We assume that the potential effects of wildfire on the Grider salamander DPS are similar to those described under Factor A for the Siskiyou Mountains salamander. It is likely that intense, stand-replacing fires reduce habitat quality for this salamander by reducing overstory cover and consuming moss, duff and forest floor litter; affecting the microclimate conditions. However, Siskiyou Mountains salamanders appear to be behaviorally adapted to dry-season fires because they are underground during summer and fall when most wildfires occur. While it is likely that large-scale intense wildfires may negatively impact some populations, at least in the short term, populations appear to persist and recover as vegetation is re-established after severe habitat disturbances. Fire regimes within the Klamath-Siskiyou region are characterized by mixed-severity fires that burn in a range of intensities, resulting in a mosaic of habitat effects. Fire effects are frequently moderated on lower slopes with northerly exposures and topographic conditions frequently associated with salamander locations.

Direct Disturbance: Roads and Road Construction, Mining, and Rock Quarrying

We assume that the effects of activities that physically alter the talus substrates occupied by Grider salamanders are similar to those described under Factor A for the Siskiyou Mountains salamander. Although research to evaluate salamander response to physical disturbance is lacking, it is reasonable to assume that these activities likely reduce habitat quality or remove habitat. In addition, some research suggests that forest roads may pose a barrier to these salamanders, reducing dispersal and connectivity among populations. We find that, while it may reasonably be expected that crushing or removal of talus habitat during road construction, mining, or rock quarrying could negatively affect Grider salamander populations, these activities affect a very small area of the DPS range. For this reason, Olson et al. (2007, p. 17) conclude that these disturbances do not pose a primary threat to the species. Numerous records exist of the salamanders occupying road cuts and sites with historical mining activity, suggesting that these disturbances do not eliminate populations. The rate of road construction, which is typically associated with access for timber harvesting, has declined significantly as timber harvest levels have dropped. Surface mining rarely occurs within the range of the DPS, and rock quarrying consists of a small number of sites encompassing an insignificant proportion of the range (less than 100 ac (40.5 ha)).

Summary of Factor A

We find that, while the abundance and population structure of Grider salamanders appear to suffer short-term negative effects from intensive timber management practices such as clear-cutting, these practices are severely restricted on Federal lands, which constitute over 90 percent of the DPS's range. Less than five percent of the Grider salamander's range lies within the Matrix-General Forest land allocation where intensive timber harvesting is anticipated to occur. Less intensive harvest practices appear to have relatively minor or short-term impacts to salamander abundance, and the available evidence suggests that salamander populations persist in a broad range of forest habitat conditions and under different management practices.

The system of NWFP reserves and management guidelines in effect on Federal lands, in combination with other Federal land management direction and the Special Status Species programs, provide substantial protection for Grider salamander habitat, dramatically reducing the likelihood of large-scale reduction of suitable or occupied habitat due to timber harvesting. Even without Survey and Manage protections, the available evidence does not show that timber harvest practices on Federal lands, either alone or in combination with other habitat disturbing activities such as mining, road building or wildfire, have reduced the habitat or range of this species or are likely to do so in the foreseeable future.

Management practices on private timberlands may negatively affect some populations of the Grider salamander DPS; however, due to the patchy distribution of private lands within the larger matrix of Federal lands, and the ability of these salamanders to persist in managed habitats, we conclude that habitat modifications on this small portion of the Grider salamander DPS's range do not constitute a substantial threat to the DPS.

Wildfires are a naturally occurring disturbance factor in the Klamath-Siskiyou region, and are expected to influence the abundance and distribution of salamander habitats. However, the effects of most wildfires on salamander habitat are temporary and populations appear to recover as vegetation recovers. Wildfires typically burn in a mosaic pattern of intensities, leaving a variety of habitat conditions for salamanders within burned areas.

Grider salamander populations have been shown to exist in a range of habitat conditions that have experienced timber harvesting, wildfire, and other disturbances, and there is little evidence to suggest that populations are extirpated followed the land management activities such as thinning and salvage harvesting typically employed on KNF lands. Intense disturbances such as clear-cutting are highly limited by current land-use regulations, and along with rock quarrying and road construction constitute a tiny fraction of the DPS's habitat. Therefore, we conclude that the Grider salamander DPS is not now, or in the foreseeable future, threatened by

destruction, modification, or curtailment across its range.

Factor B: Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

We are not aware of any information that indicates overutilization for commercial, recreational, scientific, or educational purposes threatens, now or in the foreseeable future, the Grider salamander DPS across its range.

Factor C: Disease or Predation

Chytridiomycosis is a relatively recently described epidermal infection of amphibians caused by the chytrid fungus *Batrachochytrium dendrobatidis.* This fungus requires moisture for survival (Johnson and Speare 2003, p. 922) and is therefore more likely to pose a threat to aquatic amphibians than to terrestrial ones. As described for the Siskiyou Mountains salamander, we do not anticipate that the Grider salamander DPS will be exposed to this disease or that exposure would lead to transmission through significant portions of its range. This DPS is not associated with bodies of water, occurs in a characteristically dry environment, is only active above ground for brief and intermittent periods during the year, and appears to have limited dispersal abilities. Given these restrictions, we believe that the Grider salamander DPS is unlikely to be exposed to diseased water or infected aquatic amphibians and, if infected, these salamanders are unlikely to transmit the disease between populations.

The Service is not aware of any predators that potentially pose a threat to the species. We therefore conclude that the Grider salamander DPS is not now, or in the foreseeable future, threatened by disease or predation across its range.

Factor D: Inadequacy of Existing Regulatory Mechanisms

Federal Lands

Existing Federal regulations currently provide substantial protection on Federal lands for the Grider salamander DPS through the NWFP land use allocations and their management provisions. The NWFP management provisions and current status of the Survey and Manage Program are described under Factor D for the Siskiyou Mountains salamander. The Survey and Manage Program contains specific guidance for the Grider salamander DPS, requiring surveys of potentially suitable talus habitat and restricting management activities at occupied salamander locations. For purposes of this finding, we assume that NWFP's Survey and Manage Program is eliminated for future projects on Federal lands within the range of the DPS.

Given the high proportion of KNF lands in reserved land allocations (86 percent), the low rate of timber harvest, and the low intensity of harvest practices typically employed by the KNF, we conclude that the removal of Survey and Manage guidelines does not pose a substantial threat to the species. Management of the Grider salamander DPS will be conducted under the USFS's Sensitive Species Program, which does not specify protections, but contains provisions for development of conservation strategies that are anticipated to provide an additional layer of security for the DPS.

Private Lands and State Regulations

The Siskiyou Mountains salamander is listed as a threatened species in California and receives substantial protections pursuant to CESA. These protections include the requirement of surveys prior to project implementation and prohibitions on timber harvest in established buffers around occupied suitable habitat (see Factor D for Siskiyou Mountains salamander). The future of CESA protections for Grider salamander populations on private timberlands is uncertain. However, any future changes in the status of CESA protections for the Grider salamander DPS would affect only nine percent of the range of the Grider salamander DPS, and this area consists of small parcels interspersed among Federal lands. This, combined with evidence that Grider salamander populations persist in disturbed habitats, suggests that the removal of CESA protections will not pose a substantial threat to the species.

Summary of Factor D

The Grider salamander DPS receives substantial protection based on the land allocations and Standards and Guidelines of the NWFP and KNF Land and Resource Management Plan. Future protection of the Grider salamander DPS will also occur through the USFS Sensitive Species Program. The high proportion the DPS's range within reserved land allocations, combined with the overall low rate and intensity of timber harvest on Federal lands leads us to conclude that elimination of the Survey and Manage guidelines does not pose a substantial threat to this DPS. We find that the combination of Federal regulations and land management planning guidelines provide adequate existing regulatory mechanisms across the vast majority of the DPS's range.

The Grider salamander DPS also receives protection on private lands in California under CESA. The uncertainty of future CESA protections for Grider salamander populations on private lands does not pose a substantial threat to the DPS because: (1) Private lands comprise a small portion of the DPS's range and generally consist of small parcels interspersed among Federal lands; and (2) salamander populations have been shown to persist in managed landscapes. We therefore conclude that the Grider salamander DPS is not now, or in the foreseeable future, threatened by inadequate existing regulatory mechanisms.

Factor E: Other Natural or Manmade Factors Affecting the Continued Existence of the Species

Other natural or manmade factors that may affect the persistence of the Grider salamander DPS within all or significant portion of its range are climate changes associated with global warming and stochastic events, which are rare, chance events, such as epidemics and large, severe wildfires.

Climate Change

Because the physiology, ecology, and habitat associations of the Grider salamander DPS are similar to other members of the Siskiyou Mountains salamander Complex, we conclude that our analysis of the potential effects of climate change and stochastic events under Factor E for the Siskiyou Mountains salamander applies to the Grider salamander DPS as well. Most of the climate change models available for the Pacific Northwest predicted increases in average temperatures; however, models were inconsistent with regard to future precipitation. Some models predicted significant increases in annual precipitation and cloud cover, which could act to ameliorate any negative impacts caused by increased temperatures. Given the inconsistency of climate change predictions available to us, we are unable to predict the potential effects of future climate change on the Grider salamander DPS at this time.

Stochastic Events

The relatively small geographic range (174,285 ac (70,529 ha)) and limited dispersal abilities of the Grider salamander DPS may increase its vulnerability to stochastic (rare, chance) events such as epidemics or large, severe fires because a single event can occur within all or a large portion of the range, and individuals may be unable to escape the disturbance or recolonize habitat following extirpation. The

petitioners claim that these salamanders are rare, patchily distributed, and easily extirpated by disturbances, making them highly vulnerable to extinction (Greenwald and Curry 2007, p. 1). However, as described under ''Range and Distribution'' and Factor A for the Siskiyou Mountains salamander, current research suggests that Grider salamanders are in fact well-distributed within their range, that they occur at high densities in some areas, and that they persist in areas that have experienced disturbances. These traits act to decrease the potential vulnerability conferred on this DPS by its small range. While it may be reasonably expected that negative effects to abundance or population structure may follow severe disturbances (as described under Factor A for the Siskiyou Mountains salamander), there is no evidence that they result in significant losses of populations.

A large wildfire that affects the majority of the range of the Grider salamander DPS is a plausible description of a significant stochastic event. For example, 499,965 ac (202,329 ha) burned during the 2002 Biscuit Fire in southwestern Oregon and northwestern California. Approximately 44 percent of the area (219,985 ac (89,025 ha)) was severely burned (USDA and USDI 2004). In comparison, the species range of the Grider salamander is 174,285 ac (70,529 ha). Although there is evidence that fire size and intensity may have increased in the Klamath-Siskiyou region, large fires with mixed severity are characteristic of the natural disturbance regime (Odion et al. 2004, p. 933; Agee 1993, pp. 388–389) within which these salamanders have evolved. The mosaic pattern of fire effects, combined with the salamanders' ability to remain protected underground and persist during postfire vegetation recovery, indicates that the threat posed by this stochastic event is unlikely to result in large-scale extirpation of populations.

Summary of Factor E

Because of the uncertain nature of climate change predictions, particularly predictions of future precipitation patterns, we are unable to evaluate the potential for climate change to impact Grider salamander populations in the foreseeable future. We find that, although stochastic events such as large wildfires may occur within a large portion of this salamanders' restricted range, Grider salamanders appear to persist following wildfires and other disturbances, to recover as vegetation is re-established following disturbance, and have adequate numbers of well-distributed populations throughout their range to allow for persistence and viability of this DPS. We therefore conclude that the Grider salamander DPS is not now, or in the foreseeable future, threatened by the individual or cumulative effects of climate change or stochastic events such as epidemics or large, severe wildfires.

Finding

We assessed the best available scientific and commercial information regarding threats faced by the Grider salamander DPS. We have reviewed the petition, information available in our files, and information submitted to us following our 90-day petition finding (72 FR 14750; March 29, 2007). We also consulted with recognized salamander experts and Federal land managers, and arranged for researchers to initiate field studies to assess the distribution of genetic entities within the salamander complex, and demographic response of these species to forest structure.

We find little support for the petitioners' claim that the Grider salamander DPS is threatened by habitat destruction caused by timber harvesting and wildfire, and that existing regulatory mechanisms are inadequate to protect the DPS from this habitat loss. While the available information suggests that Grider salamanders may be positively associated with older forest conditions, the majority of studies and available field data show the species occupying a wide range of forest conditions, including previously harvested areas. Recent research indicates that even in severely disturbed habitats, the salamanders persist and populations recover as vegetation is re-established over time. Less intensive disturbances such as forest thinning and mixed-effects wildfire appear to have minor or short-term impacts on salamander abundance. There is no reliable evidence that indicates that loss of populations or curtailment of this DPS's range has occurred.

We acknowledge that intensive timber harvesting practices such as clear-cutting may have short-term negative impacts on abundance and population structure of Grider salamanders. The extent and magnitude of such practices, however, are severely limited by a number of regulatory mechanisms and other factors operating within the salamanders' range, as evidenced by the steep decline in timber harvest levels on Federal lands that constitute 91 percent of the DPS' range. Over the past 20 years, timber harvest levels, particularly of intensive harvest methods, on Federal lands within the range of the Grider salamander have declined by over 93 percent. Levels of timber harvesting are higher on private lands, which constitute only nine percent of the DPS's range and occur as small parcels interspersed among Federal lands. Due to the small proportion of the DPS's range that consists of private lands, the scattered small size of private land parcels, and the ability of Grider salamanders to persist in managed landscapes, we conclude that management activities on private lands do not pose a substantial threat to this DPS.

There are a number of existing regulatory mechanisms that provide protection for the Grider salamanders and its habitat. The system of land use allocations under the NWFP act to limit the amount and intensity of land management activities on Federal lands, as evidenced by the dramatic decline in timber harvest levels observed since the NWFP was implemented. The Survey and Manage Mitigation Measure Standards and Guidelines are one aspect of the NWFP that, in the past, has provided protection specifically to occupied salamander locations. While the Survey and Manage Program has been eliminated for future projects on Federal lands, we find that existing land management regulations are adequate given the low degree of threat posed by land management activities.

Populations of Grider salamanders are well distributed, and abundance within populations can be high. There are 76 known locations for this DPS, and many areas supporting suitable habitat have not been surveyed. These population characteristics, combined with the species' apparent ability to persist and recover following habitat disturbance, indicates that Grider salamanders are resilient to stochastic events such as wildfire. Our evaluation of climate change modeling for the geographic area inhabited by the salamanders does not support the contention that climate change poses a threat to Grider salamanders. While increases in average daily temperatures are reliably predicted for the Klamath-Siskiyou region, predictions regarding timing and amount of precipitation are inconsistent, precluding any meaningful evaluation of future effects to these salamanders. It is not currently possible to forecast the specific effects of future climate on salamander populations.

Our evaluation of the five listing factors does not support the contention that there are threats of sufficient imminence, intensity, or magnitude as to cause substantial losses of population distribution or viability of the Grider salamander DPS. Therefore, we do not

find that the Grider salamander DPS is in danger of extinction (endangered), nor is it likely to become endangered within the foreseeable future (threatened) throughout its range. Therefore listing the Grider salamander DPS as threatened or endangered under the Act is not warranted at this time.

Scott Bar Salamander

Summary of Factors Affecting the Species

Factor A: The Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

The Service believes that the potential effects of habitat perturbations such as timber harvest and fire on the Scott Bar salamander are the same as those previously described for the entire Siskiyou Mountains salamander Complex. This conclusion is based on: (1) Our understanding of the behavior, physiology, and habitat associations of the Scott Bar salamander based primarily on research conducted across the range of the entire Siskiyou Mountains salamander Complex; and (2) available information which indicates that members of the complex have similar physiological and behavioral characteristics, and consequently similar habitat associations (Welsh et al. 2007a, p. 31). Because the range of the Scott Bar salamander is roughly 32 percent of the area occupied by the Siskiyou Mountains salamander, the relative magnitude of effects caused by habitat perturbations may be greater at this smaller spatial scale. Despite differences in scale, we believe that the potential effects of timber harvesting, fire, and other habitat perturbations on the Scott Bar salamander are the same as those described previously for the Siskiyou Mountains salamander. To avoid redundancy, these effects are summarized below; further detail and citations may be found in the Factor A analysis for Siskiyou Mountains salamander.

Effects of Timber Harvesting on the Scott Bar Salamander

Our evaluation of recent research results and survey information indicates that, while abundance of Scott Bar salamanders may be greater at sites with dense, mature forest cover, this species also occupies a wide range of forest age and density conditions. Intensive timber harvesting practices such as clear-cutting likely have negative effects on habitat quality and subsequent abundance and population structure of salamanders. However, recent research suggests that Scott Bar salamanders persist in disturbed sites and their populations recover as vegetation is re-established and habitat conditions improve (Welsh et al. 2007b).

Roughly 40 percent of known Scott Bar salamander locations occur on private timberlands where intensive timber management has been conducted for decades. Farber (2007a, p. 3) evaluated population structure and habitat characteristics at all Scott Bar salamander sites known to be occupied on and adjacent to Timber Products Company (TPC) lands. Ninety-four percent of the sites exhibited evidence of at least one habitat disturbance such as roads, logging activity, wildfire, and mining; 53 percent had evidence of recent or historic timber harvest. None of the salamander sites were in old-growth or late-seral habitat; all were in relatively young forests and over 50 percent occurred in stands with open canopies. At 26 sites on TPC lands where a minimum of two surveys were conducted, 96 percent supported adult salamanders, and 65 percent exhibited all life stages (adults, subadults, and juveniles); gravid females were detected at 54 percent of sites. While these results cannot be inferred to the entire species' range, they clearly suggest that Scott Bar salamander populations persist and appear to be viable within the range of habitat conditions found on managed timberlands.

Extent and Magnitude of Timber Harvesting Effects on the Scott Bar Salamander

Existing land management regulations place substantial limits on the extent and magnitude of potential effects caused by timber harvesting on populations of Scott Bar salamanders. Approximately 78 percent of the Scott Bar salamanders' range consists of Federal lands managed by the KNF under the provisions of the NWFP. Approximately 51 percent of the range occurs within reserves (Late-successional Reserves, Wilderness, and Riparian Reserves) withdrawn from scheduled timber harvesting; an additional 19 percent of the range is within Matrix-Retention areas where timber harvest is restricted. Only about eight percent of the Scott Bar salamanders' range lies within the Matrix-General Forest land allocation where intensive timber harvesting is anticipated to occur.

The rate and intensity of timber harvesting has declined substantially on Federal lands within the range of the Scott Bar salamander, primarily due to NWFP provisions. The amount of timber sold and removed on the Klamath National Forest declined by roughly 93 percent between 1984 and 2005, from an average of 238.2 million board feet of timber per year in 1979 to 1984, to 15.9 million board feet annually between 2000 and 2005 (USDA 2006a). The proportion of intensive timber management practices such as clear-cutting and overstory removal has also declined sharply, from an annual average of 3,733 ac (1,511 ha) per year from 1988 to 1991, to roughly 38 ac (15.4 ha) per year during 2000 to 2006 (USDA 2007b). We conclude that the land management regulations responsible for this long-term declining trend in the rate and intensity of timber harvesting greatly reduces the likelihood that a substantial proportion of the Scott Bar salamander will be affected by intensive timber harvesting.

Private timberlands comprise 22 percent of the range of the Scott Bar salamander. State of California regulations under the California Endangered Species Act currently protect Scott Bar salamanders on private lands by requiring surveys and prohibiting habitat modification at occupied sites, timber harvesting, and other habitat disturbances.

Private timberlands within the range of the Scott Bar salamander occur as small (one square mile) parcels distributed in a checkerboard pattern surrounded by KNF lands. This pattern acts to maintain the distribution of, and connectivity among, salamander populations at larger spatial scales, subsequently reducing the overall impact of habitat losses on private lands. Salamander populations occupying the private portions of this landscape pattern may experience fluctuations in the amount or quality of habitat through time but likely receive demographic support from adjacent populations on Federal lands where management is more favorable.

Although the rate and intensity of timber harvest is greater on privately owned timberlands within the range of the Scott Bar salamander, not all private lands are expected to receive intensive treatments. Timber Products Company, the primary industrial landowner within the species' range, estimates that roughly 31 percent of the company's land base within the range of the Scott Bar salamander in Siskiyou County consists of land unsuitable for harvest (e.g., montane hardwoods, watercourse protection zones, rock outcrops). On the remaining 69 percent, 31 percent of projected timber harvest prescriptions consist of less-intensive harvest prescriptions such as thinning and selection, and 69 percent are more intensive treatments such as clear-cut, shelterwood removal, and seed tree

harvest (Farber 2007c); suggesting that about 50 percent of TPC lands are anticipated to receive intensive harvesting. Of the 25 Scott Bar salamander locations currently known on TPC lands, 4 (16 percent) occur in riparian areas where timber harvest is restricted by State regulations, and 7 (28 percent) are located in previously harvested areas where additional timber harvesting is not anticipated over the next 20 to 30 years (Farber 2007b, pp. 1–2). This information, combined with data indicating that salamander populations persist within managed timberlands, further suggests that even in the absence of State protections for this species, intensive timber harvest would not be expected to impact a majority of populations within the 22 percent of the species' range that occurs on private lands or pose a substantial threat to the species.

Wildfire

Based on the best scientific information available, we believe the potential effects of wildfire on the Scott Bar salamander are similar to those described previously for the Siskiyou Mountains salamander. Fire regimes within the Klamath-Siskiyou region are characterized by mixed-severity fires that burn in a range of intensities, resulting in a mosaic of habitat effects at both fine and landscape-level spatial scales. Fire effects are frequently moderated on lower slopes with northerly exposures, topographic conditions frequently associated with salamander locations. Intense, stand-replacing fires likely reduce habitat quality for these salamanders by reducing overstory cover and consuming moss, duff, and forest floor litter, thereby modifying the microclimate conditions. It is likely that large-scale intense wildfires may negatively affect some populations, at least in the short term, but the degree to which more typical mixed-severity wildfires affect the viability of salamander populations is unknown. However, Scott Bar salamanders appear to be behaviorally adapted to dry-season fires because they are underground during summer and fall when most wildfires occur. Populations appear to persist and recover as vegetation is re-established after severe habitat disturbances (Bull et al. 2006, p. 24; Welsh et al. 2007b).

Direct Disturbance: Roads and Road Construction, Mining, and Rock Quarrying

As described under Factor A for the Siskiyou Mountains salamander, activities that physically alter the talus substrates occupied by the Scott Bar salamander have the potential to reduce habitat quality or remove habitat. While some of these activities such as rock quarrying may completely remove habitat, evidence suggests that salamander populations continue to occupy areas that show evidence of previous mining and road construction. In particular, numerous Scott Bar salamander locations occur in road cuts where rock substrate has been exposed. Although the ease of accessing and surveying such sites may influence the probability of detecting salamanders, the frequent presence of salamanders in road cuts suggests that this species can persist in or recolonize disturbed substrates. Despite these potential effects, road construction and rock quarrying are extremely limited in spatial extent, affecting a very small fraction of the salamander's range, and are not considered a substantial threat to these salamanders (Olson et al. 2007, p. 17).

Summary of Factor A

The abundance and population structure of Scott Bar salamanders appear to exhibit short-term negative effects from intensive timber management practices such as clear-cutting, but these practices are severely restricted on Federal lands, which constitute 78 percent of the species' range. Less intensive harvest practices appear to have relatively minor or short-term impacts to salamander abundance, and the available evidence suggests that salamander populations persist in a broad range of forest habitat conditions and under different management practices.

Scott Bar salamander populations receive substantial protection from the system of NWFP reserves and management guidelines in effect on Federal lands, in combination with other land management direction (e.g. Roadless Areas, retention areas) and the Special Status Species programs, dramatically reducing the likelihood of substantial negative impacts to suitable or occupied habitat due to timber harvesting. Even without Survey and Manage protections, the available evidence does not show that timber harvest practices on Federal lands, either alone or in combination with other habitat disturbing activities such as mining, road building or wildfire, have reduced the habitat or range of this species or are likely to do so in the foreseeable future.

Although timber harvest levels on private timberlands are greater than on Federal lands, current State regulations restrict management activities at occupied Scott Bar salamander locations. Known salamander locations on private timberlands occur in a variety of habitat conditions, including previously harvested areas and naturally open sites, demonstrating that populations persist in these managed landscapes. The dispersed pattern of private land parcels among Federal lands acts to maintain well-distributed populations, and may allow demographic support between adjacent populations.

Wildfires are a naturally-occurring disturbance factor in the Klamath-Siskiyou region, and are expected to influence the quality, abundance and distribution of Scott Bar salamander habitat. However, the effects of most wildfires on salamander habitat appear to be temporary and populations recover as vegetation is re-established on burned areas. Wildfires typically burn in a mosaic pattern of intensities, leaving a variety of habitat conditions for salamanders within burned areas.

In summary, Scott Bar salamander populations have been shown to exist in a range of habitat conditions that have experienced timber harvesting, wildfire, and other disturbances, and there is evidence suggesting that populations persist and recover following habitat disturbances. Current land-use regulations, including State regulations protecting the Scott Bar salamander on private timberlands, strongly limit intense disturbances such as clear-cutting, rock quarrying, and road construction. Therefore, we conclude that the Scott Bar salamander is not now, or in the foreseeable future, threatened by destruction, modification, or curtailment across its range.

Factor B: Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

We are not aware of any information that indicates overutilization for commercial, recreational, scientific, or educational purposes threatens the Scott Bar salamander, now or in the foreseeable future, across its range.

Factor C: Disease or Predation

Chytridiomycosis is a relatively recently described epidermal infection of amphibians caused by the chytrid fungus *Batrachochytrium dendrobatidis.* This fungus requires moisture for survival (Johnson and Speare 2003, p. 922) and is therefore more likely to pose a threat to aquatic amphibians than to terrestrial ones. As described for the Siskiyou Mountains salamander, we do not anticipate that the Scott Bar salamander will be exposed to this disease or that exposure would lead to

transmission through significant portions of its range. This species is not associated with bodies of water, occurs in a characteristically dry environment, is only active above ground for brief and intermittent periods during the year, and appears to have limited dispersal abilities. Given these restrictions, we believe that the Scott Bar salamander is unlikely to be exposed to diseased water or infected aquatic amphibians and, if infected, is unlikely to transmit the disease between populations.

The Service is not aware of any predators that potentially pose a threat to the species. We therefore conclude that the Scott Bar salamander is not now, or in the foreseeable future, threatened by disease or predation across its range.

Factor D: Inadequacy of Existing Regulatory Mechanisms

Federal Lands

Existing Federal regulations currently provide substantial protection on Federal lands for the Scott Bar salamander through the NWFP land use allocations and their management requirements. The provisions and current status of the Survey and Manage Program are described under Factor D for the Siskiyou Mountains salamander. The KNF extended Survey and Manage Program guidance to the Scott Bar salamander, since this species cannot be easily distinguished from the Siskiyou Mountains salamander in the field (USDA 2006b, p. 2).

The Survey and Manage Program requires surveys of potentially suitable talus habitat and restricting management activities at occupied Scott Bar salamander sites. For purposes of this finding, we assume that NWFP's Survey and Manage Program is eliminated for future projects on Federal lands within the range of the Scott Bar salamander.

Given the high proportion of the species range in reserved land allocations (70 percent), the low rate of timber harvest, and the low intensity of harvest practices typically employed by the KNF, we conclude that the removal of Survey and Manage guidelines will not constitute a substantial threat to the species. Management of the Scott Bar salamander will be conducted under the USFS's Sensitive Species Program, which does not specify protections for the Scott Bar salamander but contains provisions for development of conservation strategies that are anticipated to provide an additional layer of security for the species.

The low proportion of KNF lands in land allocations where intensive timber harvest is anticipated to occur (8 percent), combined with the low degree and immediacy of potential threats to the Scott Bar salamander, lead us to conclude that existing regulatory mechanisms are adequate to maintain the viability of the Scott Bar salamander on Federal lands throughout the species' range.

Private Lands and State Regulations

In July 2005, CDFG described the Scott Bar salamander as a ''newly discovered species from what was part of the range of *Plethodon stormi*'' (CDFG 2005, p. 31). Based on this change of taxonomic status, CDFG took the position that the Siskiyou Mountains salamander populations now recognized as Scott Bar salamanders were no longer protected under CESA. That position was successfully challenged by three environmental organizations in state court (*Environmental Protection Information Center* v. *California Department of Fish and Game,* (No. CPF–06–506585)). The court concluded that, ''[b]y virtue of its having been accorded protection as a subgroup of a listed, protected species, the Scott Bar salamander's protection under the California Endangered Species Act cannot be withdrawn by the California Department of Fish and Game without action first being taken by the California Fish and Game Commission.'' On October 3, 2006, the California Fish and Game Commission received a petition to list the Scott Bar salamander under CESA. The Commission rejected the petition due to the protections already provided the species under CESA.

The Scott Bar salamander is recognized by the Commission as protected under CESA as a sub-group or sub-population of the listed Siskiyou Mountains salamander (Cal. Code Regs. tit. 14, § 670.5, subd. (b)(3)(A).). However, the California Office of Administrative Law recently rejected for procedural reasons a formal effort by the Commission to recognize the protected status of the Scott Bar salamander under CESA in State regulations (Cal. Reg. Notice Register 2007, No. 28–Z, p. 1191). The Scott Bar salamander, therefore, is not specifically listed under CESA, but retains the same protections afforded the Siskiyou Mountains salamander. The Service is not aware of any other formal action by the Commission to recognize the protected status of Scott Bar salamander under CESA.

The CDFG petition to delist the Siskiyou Mountains salamander does not include the historic portion of this species' range known to be occupied by the Scott Bar salamander. Therefore, the Service believes that regardless of the California Fish and Game Commission's decision on whether to delist the Siskiyou Mountains salamander, current State protections for the Scott Bar salamander will remain in effect until a formal rule-making process to remove these protections is undertaken. To our knowledge, there is no formal process currently underway to remove protections for the Scott Bar salamander.

We recognize the uncertainty surrounding the future of State protections for Scott Bar salamanders on private lands and have evaluated the threat potentially posed by timber harvesting on private lands if protections were absent. As described under Factor A, we find that there is little evidence to suggest that timber harvesting on private lands threatens Scott Bar salamander populations because: (1) Numerous populations are currently known to occur in a variety of managed habitat conditions on private timberlands; (2) research indicates that populations of these salamanders persist following intensive timber harvest and recover as vegetation is re-established, and less intensive harvest practices appear to have minor or short-term effects on salamander abundance; and (3) private lands constitute only 22 percent of the species' range, and are distributed in a dispersed pattern among Federal lands where conditions are more favorable and thus acts to maintain the distribution of, and connectivity among, salamander populations at larger spatial scales and reduce the impacts of intensive timber harvest on adjacent private lands. Therefore, we find that in the event that State protections for the Scott Bar salamander are removed, the lack of regulatory protections on private lands would not pose a substantial threat to this species in the foreseeable future.

Summary of Factor D

The Scott Bar salamander receives substantial protection based on the land allocations and Standards and Guidelines of the NWFP and KNF Land and Resource Management Plan. Future protection of the Scott Bar salamander will likely also occur through the USFS Sensitive Species Program. The high proportion the species' range within reserved land allocations, combined with the overall low rate and intensity of timber harvest on Federal lands leads us to conclude that elimination of the Survey and Manage guidelines does not pose a substantial threat to this species. We find that the combination of Federal regulations and land management planning guidelines provide adequate

existing regulatory mechanisms across the vast majority of the species' range.

The Scott Bar salamander also receives protection on private lands in California under CESA. While there presently is no effort underway to remove State protections for the Scott Bar salamander, the continued protection of the species under CESA for the foreseeable future is not certain. However, we find that the uncertain future of CESA protections for Scott Bar salamander populations on private lands does not pose a substantial threat because: (1) Private lands comprise a small portion of the species' range and are distributed in small parcels interspersed among Federal lands; and (2) salamander populations have been shown to persist in managed landscapes. We therefore conclude that the Scott Bar salamander is not now, or in the foreseeable future, threatened by inadequate regulatory mechanisms.

Factor E: Other Natural or Manmade Factors Affecting the Continued Existence of the Species

Other natural or manmade factors that may affect the persistence of the Scott Bar salamander across its range are climate changes associated with global warming and stochastic events, which are rare, chance events such as epidemics and large, severe wildfires.

Climate Change

The similarities in physiology, ecology, and habitat associations between the Scott Bar salamander and other members of the Siskiyou Mountains salamander Complex, combined with the large scales at which climate change studies are conducted, lead us to conclude that our analysis of the potential effects of climate change under Factor E for the Siskiyou Mountains salamander applies to the Scott Bar salamander as well. Given its physiology, this species may be strongly affected by changes to precipitation patterns. Although most of the available climate models predict increases in average temperatures, models were inconsistent with regard to future precipitation; increases in annual precipitation and cloud cover are a plausible outcome and could act to ameliorate any negative impacts caused by increased temperatures. We are unable to predict the potential effects of future climate change on the Scott Bar salamander at this time.

Stochastic Events

The Scott Bar salamander is an endemic species with a relatively small geographic range (136,740 ac (55,335 ha)) and limited dispersal abilities. These traits may increase its vulnerability to stochastic (rare, chance) events such as epidemics or large, severe fires because a single event can occur within all or a large portion of the range, and individuals may be unable to escape the disturbance or recolonize habitat following extirpation. The petitioners claim that these salamanders are rare, patchily distributed, and easily extirpated by disturbances, making them highly vulnerable to extinction (Greenwald and Curry 2007, p. 1). However, current research suggests that Scott Bar salamanders are in fact well-distributed within their range, that they occur at high densities in some areas, and that populations persist in managed landscapes (see ''Range and Distribution'' and Factor A for the Siskiyou Mountains salamander). These traits act to decrease the potential vulnerability conferred on this species by its small range. Severe disturbances such as clear-cutting or intense wildfires may result in negative effects to abundance or population structure of this species (as described under Factor A for the Siskiyou Mountains salamander), but there is no evidence that they result in significant losses of populations, and populations appear to recover over time.

Although there is evidence that fire size and intensity may have increased in the Klamath-Siskiyou region, large fires with mixed severity are characteristic of the natural disturbance regime (Odion et al. 2004, p. 933; Agee 1993, pp. 388–389) within which these salamanders have evolved. However, a large wildfire that affects the majority of the range of the Scott Bar salamander is a plausible description of a significant stochastic event. Large fires such as the 2002 Biscuit Fire in southern Oregon may encompass an area similar to or larger than the range of this species. This does not, however, demonstrate that a fire of this magnitude is likely to threaten the Scott Bar salamander in the foreseeable future. The diverse topography and patchy distribution of habitats within the salamanders' range suggests that a large fire would be unlikely to have homogeneous effects at a large scale. The resulting mosaic pattern of fire effects, combined with the salamanders' ability to remain protected underground and persist during postfire vegetation recovery, indicates that the threat posed by such a stochastic event would be unlikely to result in large-scale extirpation of populations.

Summary of Factor E

The uncertain nature of climate change predictions, particularly predictions of future precipitation patterns, precludes a meaningful evaluation of potential impacts to Scott Bar salamander populations resulting from future climate conditions. We find that, although stochastic events such as large wildfires may occur within a large portion of this salamanders' restricted range, Scott Bar salamanders appear to persist following wildfires and other disturbances, to recover as vegetation is re-established following disturbance, and have adequate numbers of well-distributed populations throughout their range to allow for persistence and viability of this species. We therefore conclude that the Scott Bar salamander is not now, or in the foreseeable future, threatened by the individual or cumulative effects of climate change or stochastic events such as epidemics or large, severe wildfires.

Finding

We assessed the best available scientific and commercial information regarding threats faced by the Scott Bar salamander. We have reviewed the petition, information available in our files, and information submitted to us following our 90-day petition finding (72 FR 14750; March 29, 2007). We also consulted with recognized salamander experts, and Federal and private land managers, and arranged for researchers to initiate field studies to assess the distribution of genetic entities within the salamander complex and demographic response of these species to forest structure and management practices.

We find little support for the petitioners' claim that the Scott Bar salamander is threatened by habitat destruction caused by timber harvesting and wildfire, and that existing regulatory mechanisms are inadequate to protect the species. While the available information suggests that Scott Bar salamanders may be positively associated with older forest conditions, the majority of studies and available field data show the species occupying a wide range of forest conditions, including previously harvested areas. Recent research indicates that these salamanders persist and populations recover as vegetation is re-established in intensively disturbed habitats. Less-intensive disturbances such as forest thinning and mixed-effects wildfire appear to have minor or short-term impacts on salamander abundance. There is no reliable evidence that indicates loss of populations or curtailment of this species' range has occurred.

We acknowledge that the abundance and population structure of Scott Bar salamander populations may be

negatively affected by intensive timber harvesting practices such as clear-cutting. The extent and magnitude of such practices, however, are severely limited by a number of regulatory mechanisms and other factors operating within the salamanders' range, as evidenced by the steep decline in timber harvest levels on Federal lands that constitute 78 percent of the species' range. Although levels of timber harvesting are higher on private timberlands, such lands constitute only 22 percent of the species' range and occur as small parcels interspersed among Federal lands. The small proportion of the range consisting of private lands, coupled with the ability of Scott Bar salamanders to persist in managed landscapes, leads us to conclude that forest management activities on Federal or private lands do not pose a substantial threat to this species.

Several complementary regulatory mechanisms provide protection for Scott Bar salamanders and their habitats. On Federal lands constituting 78 percent of the species' range, the NWFP's system of land use allocations and management guidelines impose substantial limitations on the amount and intensity of land management activities, as evidenced by the dramatic decline in timber harvest levels observed since the NWFP was implemented. For this reason, the elimination of the Survey and Manage Program, which has provided protection specifically to occupied salamander locations, does not pose a substantial threat to the species.

As a species, the Scott Bar salamander exhibits several characteristics that, when combined, suggest that Scott Bar salamanders are resilient to stochastic events such as large wildfires. Populations of Scott Bar salamanders are distributed among several watersheds, and abundance within populations can be high. There are 115 known locations within the estimated range of this species, and the majority of suitable habitat has not been surveyed. These population characteristics, combined with the species' apparent ability to persist and recover following habitat disturbance, acts to reduce any potential threat posed by stochastic events. Our evaluation of climate change modeling for the geographic area inhabited by the salamanders does not support the contention that future climate poses a threat to Scott Bar salamanders, because it is not currently possible to forecast future precipitation regimes.

Our evaluation of the five listing factors does not support the contention that there are threats of sufficient imminence, intensity, or magnitude as to cause substantial losses of population distribution or viability of the Scott Bar salamander. Therefore, we do not find that the Scott Bar salamander is in danger of extinction (endangered), nor is it likely to become endangered within the foreseeable future (threatened) across its range. Therefore, listing the species as threatened or endangered under the Act is not warranted at this time.

Under the Services' DPS policy, (61 FR 4722, February 7, 1996) three elements are considered in the decision concerning the establishment and classification of a possible DPS. These are applied similarly for additions to the Lists of Endangered and Threatened Wildlife and Plants. These elements include: (1) The discreteness of a population in relation to the remainder of the species to which it belongs; (2) the significance of the population segment to the species to which it belongs; and (3) the population segment's conservation status in relation to the Act's standards for listing, delisting, or reclassification (i.e., is the population segment endangered or threatened). We are not aware of any information that would lead us to conclude that the Scott Bar salamander is comprised of population segments that are either discrete or significant. Therefore, we have not analyzed the Scott Bar salamander under the Services' DPS policy.

Significant Portion of the Range Analysis

Having determined that the Siskiyou Mountains salamander, the Applegate salamander DPS of Siskiyou Mountains salamander, the Grider DPS of Siskiyou Mountains salamander, and the Scott Bar salamander do not meet the definition of a threatened or endangered species, we must next consider whether there are any significant portions of their ranges where the species or DPS is in danger of extinction or is likely to become endangered in the foreseeable future.

On March 16, 2007, a formal opinion was issued by the Solicitor of the Department of the Interior, ''The Meaning of 'In Danger of Extinction Throughout All or a Significant Portion of Its Range' '' (USDI 2007c). We have summarized our interpretation of that opinion and the underlying statutory language below. A portion of a species' range (in this case, ''species'' refers to the Siskiyou Mountains salamander, the Scott Bar salamander, and both Siskiyou Mountains salamander DPSs) is significant if it is part of the current range of the species and it contributes substantially to the representation, resiliency, or redundancy of the species. The contribution must be at a level such that its loss would result in a decrease in the ability to conserve the species.

We acknowledge that the Ninth Circuit Court of Appeals decision in *Defenders of Wildlife* v. *Norton*, 258 F.3d 1136 (2001) can be interpreted to require that in determining whether a species is threatened or endangered throughout a significant portion of its range, the Service should consider whether lost historical range (as opposed to current range) constitutes a significant portion of the range of the species at issue. While this is not our interpretation of the case or the statute, we conclude that there are no such areas for the Siskiyou Mountains salamander, the Applegate DPS of the Siskiyou salamander, the Grider DPS of the Siskiyou salamander, or the Scott Bar salamander. As we discussed in detail in our assessment of threats to each species, there is no evidence of range contraction for any of the species. We have no evidence to suggest that the occupied range of any member of the Siskiyou Mountains salamander Complex is different from its historical range.

In determining whether a species is threatened or endangered in a significant portion of its range, we first identify any portions of the range of the species that warrant further consideration. The range of a species can theoretically be divided into portions in an infinite number of ways. However, there is no purpose to analyzing portions of the range that are not reasonably likely to be significant and threatened or endangered. To identify only those portions that warrant further consideration, we determine whether there is substantial information indicating that (i) The portions may be significant and (ii) the species may be in danger of extinction there or likely to become so within the foreseeable future. In practice, a key part of this analysis is whether the threats are geographically concentrated in some way. If the threats to the species are essentially uniform throughout its range, no portion is likely to warrant further consideration. Moreover, if any concentration of threats applies only to portions of the range that are unimportant to the conservation of the species, such portions will not warrant further consideration.

If we identify any portions that warrant further consideration, we then determine whether in fact the species is threatened or endangered in any significant portion of its range.

Depending on the biology of the species, its range, and the threats it faces, it may be more efficient for the Service to address the significance question first, or the status question first. Thus, if the Service determines that a portion of the range is not significant, the Service need not determine whether the species is threatened or endangered there. If the Service determines that the species is not threatened or endangered in a portion of its range, the Service need not determine if that portion is significant. If the Service determines that both a portion of the range of a species is significant and the species is threatened or endangered there, the Service will specify that portion of the range as threatened or endangered pursuant to section 4(c)(1) of the Act.

The terms ''resiliency,'' ''redundancy,'' and ''representation'' are intended to be indicators of the conservation value of portions of the range. Resiliency of a species allows the species to recover from periodic disturbance. A species will likely be more resilient if large populations exist in high-quality habitat that is distributed throughout the range of the species in such a way as to capture the environmental variability found within the range of the species. In addition, the portion may contribute to resiliency for other reasons—for instance, it may contain an important concentration of certain types of habitat that are necessary for the species to carry out its life-history functions, such as breeding, feeding, migration, dispersal, or wintering. Redundancy of populations may be needed to provide a margin of safety for the species to withstand catastrophic events. This does not mean that any portion that provides redundancy is a significant portion of the range of a species. The idea is to conserve enough areas of the range such that random perturbations in the system act on only a few populations. Therefore, each area must be examined based on whether that area provides an increment of redundancy is important to the conservation of the species. Adequate representation ensures that the species' adaptive capabilities are conserved. Specifically, the portion should be evaluated to see how it contributes to the genetic diversity of the species. The loss of genetically based diversity may substantially reduce the ability of the species to respond and adapt to future environmental changes. A peripheral population may contribute meaningfully to representation if there is evidence that it provides genetic diversity due to its location on the margin of the species' habitat requirements.

Siskiyou Mountains Salamander

The Applegate and Grider DPSs together constitute the entirety of the range of the Siskiyou Mountains salamander. We have previously determined, however, that neither DPS is threatened or endangered across its range. Therefore, according to the formal opinion on significant portion of the range (USDOI 2007), we should then evaluate whether any significant portion of the range of a DPS may warrant listing.

Applegate Salamander DPS of Siskiyou Mountains Salamander

To determine whether the Applegate salamander DPS is threatened in a significant portion of its range, we first addressed whether any portions of the range of the Applegate salamander DPS warrant further consideration. Our analysis indicates that the conservation status of the species is essentially the same throughout its range; there is no area within the range of the Applegate salamander DPS where potential threats to this species are significantly concentrated or are substantially greater than in other portions of the range. And, as we explained in detail in our analysis of the status of the species, none of the threats faced by the species, alone or in combination, are sufficient to place it in danger of extinction now (endangered) or in the foreseeable future (threatened).

We found no evidence that populations of Applegate salamander DPS are concentrated in any geographic portion of the range that would increase the vulnerability of this DPS to a particular threat. The 440 known Applegate salamander locations and suitable habitat are widely distributed across the DPS's range, and large areas of suitable habitat remain unsurveyed.

We have analyzed the threats to the Applegate salamander DPS and have determined that they are not concentrated within any geographic portion of the range, and no significant areas within the DPS's range have been determined to face any greater threats. Potential threats to the DPS on Federal lands are addressed by existing land use regulations such as the NWFP, in combination with the Special Status Species program, such that no areas face significant threats which are not being managed. We find that private timberlands do not constitute a significant proportion of the Applegate salamander DPS's range because (1) Private lands constitute a minor proportion (15 percent) of the range of the Applegate salamander, and (2) private lands within the range of the species occur as small parcels in a ''checkerboard'' pattern with Federal lands or as isolated parcels, reducing the potential for threats to be concentrated in a geographic portion of the larger range. For these reasons, we find that there are no portions of the Applegate salamander DPS's range that warrant further consideration as significant portions of the range.

We do not find that the Applegate salamander DPS is in danger of extinction (endangered) now, nor is it likely to become endangered within the foreseeable future (threatened) throughout all or a significant portion of its range. Therefore, listing the Applegate salamander DPS as threatened or endangered under the Act is not warranted at this time.

Grider Salamander DPS of Siskiyou Mountains Salamander

Applying the process described above for determining whether a species is threatened in a significant portion of its range, we also addressed whether any portions of the range of the Grider salamander DPS warrant further consideration. Our evaluation of the distribution of Grider salamander DPS populations and potential threats indicates that the conservation status of the species is essentially the same throughout its range; there is no area within the range of the Grider salamander DPS where potential threats to this species are significantly concentrated or are substantially greater than in other portions of the range. And, as we explained in detail in our analysis of the status of the species, none of the threats faced by the species, alone or in combination, are sufficient to place it in danger of extinction now (endangered) or in the foreseeable future (threatened).

We found no evidence that populations of this DPS are concentrated in any geographic portion of the range that would increase the vulnerability of this DPS to a particular threat. The 76 known Grider salamander locations and suitable habitat are widely distributed across the DPS's range, and large areas of suitable habitat remain unsurveyed.

We have analyzed the threats to the Grider salamander DPS and have determined that they are not concentrated within any geographic portion of the range, and no significant areas within the DPS's range have been determined to face any greater threats. Potential threats to the DPS on Federal lands are addressed by existing land use regulations such as the NWFP, such that no areas face significant threats which are not being managed. We find that

private timberlands do not constitute a significant proportion of the Grider salamander DPS's range because (1) Private lands constitute a minor proportion (9 percent) of the range of the Grider salamander DPS, and (2) private lands within the range of the DPS occur as small parcels in a ''checkerboard'' pattern with Federal lands or as isolated parcels, reducing the potential for threats to be concentrated in a geographic portion of the larger range. Based on the reasons described above, we find that there are no portions of the Grider salamander DPS's range that warrant further consideration as significant portions of the range.

We do not find that the Grider salamander DPS is in danger of extinction (endangered) now, nor is it likely to become endangered within the foreseeable future (threatened) throughout all or a significant portion of its range. Therefore, listing the Grider salamander DPS as threatened or endangered under the Act is not warranted at this time.

Scott Bar Salamander

To determine whether the Scott Bar salamander is threatened in a significant portion of its range, we first addressed whether any portions of the range of the Scott Bar salamander warrant further consideration. Our evaluation of the distribution of Scott Bar salamander populations and potential threats indicates that the conservation status of the species is essentially the same throughout its range; there is no area within the range of the Scott Bar salamander where potential threats to this species are significantly concentrated or are substantially greater than in other portions of the range. And, as we explained in detail in our analysis of the status of the species, none of the threats faced by the species, alone or in combination, are sufficient to place it in danger of extinction now (endangered) or in the foreseeable future (threatened).

We found no evidence that populations of Scott Bar salamanders are concentrated in any geographic portion of the range that would increase the vulnerability of this species to a particular threat. The 115 known Scott Bar salamander locations and suitable habitat are widely distributed across the species' range, and large areas of suitable habitat remain unsurveyed. The higher numbers of salamander locations on private lands is the result of mandatory surveys, and does not suggest the presence of larger or more concentrated populations on private lands.

Existing land use regulations, such as the NWFP, provide protection for the Scott Bar salamander on Federal lands while CESA provides substantial protection for the salamander on private lands in California. Further, even if the CESA protections on private lands were eliminated, the threats facing the Scott Bar salamander would not significantly increase because the private lands are not concentrated in a particular geographical area, but rather occur in a ''checkerboard'' pattern interspersed with Federal lands. This pattern of landownership serves to reduce the potential impacts on the salamander of timber harvest and other habitat disturbing activities on the relatively small portion (22 percent) of the species range that occurs on private lands, and to maintain redundancy, distribution, and connectivity among Scott Bar salamander populations. For these reasons, we conclude that there are no portions of the Scott Bar salamander's range that warrant further consideration as significant portions of the range.

We do not find that the Scott Bar salamander is in danger of extinction (endangered) now, nor is it likely to become endangered within the foreseeable future (threatened) throughout all or a significant portion of its range. Therefore, listing the species as threatened or endangered under the Act is not warranted at this time.

We make this finding at a time when Federal conservation efforts focused specifically on Applegate, Grider, and Scott Bar salamanders are in flux. Given the very recent discontinuation of the Survey and Manage Program and the fact that Survey and Manage guidelines are still applicable to ongoing Federal projects for at least another year, Federal agencies have had little time to develop and implement conservation strategies under their Special Status Species Programs. The Conservation Strategy for the Siskiyou Mountains Salamander, Northern Portion of the Range (Olson et al. 2007) covers the entire range of the Applegate salamander; the KNF is currently finalizing a Conservation Strategy for the Grider salamander and Scott Bar salamander. Both of these conservation strategies are modeled closely after the existing Survey and Manage guidance for the salamanders, but neither was evaluated as an existing conservation effort under PECE, or considered in our evaluation of threats to the species. Despite the fact that we did not rely on these existing and potential conservation efforts in our determination that the Siskiyou Mountains salamander group does not warrant protection under the Act, we note that these efforts by Federal agencies may in the future play an important role in the conservation of the species by acting as a hedge against uncertainty associated with future land management policies and our understanding of the ecology of these species. This finding represents our evaluation of the best currently available scientific information on the poorly known species, the environment they inhabit, and land management practices that may affect them, but we recognize the dynamic nature of our knowledge and land management policy. Through our participation in the development, implementation, and monitoring of these Conservation Strategies, as well as in ongoing field research of the species' habitat relationships, the Service will play a direct role in the future management and status of these salamanders.

We will continue to assess the status of both clades of the Siskiyou Mountains salamander and Scott Bar salamander by working with the USFS, BLM, and other parties to the existing Conservation Strategy; research scientists; and other individuals or groups interested in contributing to the conservation of these species. Through our participation in regular reviews of the Conservation Strategy for the Siskiyou Mountains salamander, Northern Portion of the Range, we will monitor its effectiveness in eliminating and reducing threats to the Applegate salamander over the foreseeable future.

We are continuing our involvement in the evaluation of habitat associations and effects of forest management on the Grider and Scott Bar salamanders. In 2005, the Service's Yreka Fish and Wildlife Office (YFWO), in cooperation with the USFS Redwood Sciences Laboratory and Humboldt State University, initiated research into the comparative abundance, population structure, and body condition of 60 Grider and Scott Bar salamander populations across a gradient of habitat conditions.

We request that you submit any new information concerning the status of, or threats to, these species to our Yreka Fish and Wildlife Office (see **ADDRESSES** section) whenever it becomes available. New information will help us monitor these species and encourage their conservation. If an emergency situation develops for these or any other species, we will act to provide immediate protection.

References Cited

A complete list of all references cited herein is available, upon request, from the Yreka Fish and Wildlife Office (see **ADDRESSES** section).

Author

The primary authors of this notice are the staff of the Yreka Fish and Wildlife Office (see **ADDRESSES**).

Authority

The authority for this action is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.).

Dated: January 14, 2008.

Kenneth Stansell,

Acting Director, U.S. Fish and Wildlife Service.

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Part IV

Environmental Protection Agency

40 CFR Parts 51 and 93

Transportation Conformity Rule Amendments To Implement Provisions Contained in the 2005 Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU); Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 93

[EPA–HQ–OAR–2006–0612; FRL–8516–6]

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Transportation Conformity Rule Amendments To Implement Provisions Contained in the 2005 Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this action, EPA is amending the transportation conformity rule to finalize provisions that were proposed on May 2, 2007. The Clean Air Act requires federally supported transportation plans, transportation improvement programs, and projects to be consistent with (''conform to'') the purpose of the state air quality implementation plan. Most of these amendments are necessary to make the rule consistent with Clean Air Act section 176(c) as amended by SAFETEA–LU on August 10, 2005 (Pub. L. 109–59), including changes to the regulations to reflect that the Clean Air Act now provides more time for state and local governments to meet conformity requirements, provides a one-year grace period before the consequences of not meeting certain conformity requirements apply, allows the option of shortening the timeframe of conformity determinations, and streamlines other provisions. This final rule also includes minor amendments that are not related to SAFETEA–LU, such as allowing the Department of Transportation (DOT) to make categorical hot-spot findings for appropriate projects in carbon monoxide nonattainment and maintenance areas.

EPA has consulted with DOT, and they concur with this final rule.

DATES: *Effective Date:* This final rule is effective on February 25, 2008.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2006–0612. 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., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Docket, EPA/DC, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

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SUPPLEMENTARY INFORMATION: The contents of this preamble are listed in the following outline:

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IV. Deadline for Conformity Determinations When a New Budget Is Established
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I. General Information

A. Does This Action Apply to Me?

Entities potentially regulated by the conformity rule are those that adopt, approve, or fund transportation plans, programs, or projects under title 23 U.S.C. or title 49 U.S.C. Regulated categories and entities affected by today's action include:

Category	Examples of regulated entities
Local government	Local transportation and air quality agencies, including metropolitan planning organizations (MPOs).
State government	State transportation and air quality agencies.
Federal government	Department of Transportation (Federal Highway Administration (FHWA) and Federal Transit Administration (FTA)).

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this final rule. This table lists the types of entities of which EPA is aware that potentially could be regulated by the transportation conformity rule. Other types of entities not listed in the table could also be regulated. To determine whether your organization is regulated by this action, you should carefully examine the applicability requirements in 40 CFR 93.102. If you have questions regarding the applicability of this action to a particular entity, consult the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. How Can I Get Copies of This Document?

1. Docket

EPA has established an official public docket for this action under Docket ID No. EPA–HQ–OAR–2006–0612. You can get a paper copy of this **Federal Register** document, as well as the documents specifically referenced in this action, any public comments received, and other information related to this action at the official public docket. See **ADDRESSES** section for its location.

2. Electronic Access

You may access this **Federal Register** document electronically through EPA's Transportation Conformity Web site at *http://www.epa.gov/otaq/stateresources/transconf/index.htm*. You may also access this document electronically under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the official public docket is available through *www.regulations.gov*. You may use

www.regulations.gov to view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

Certain types of information are not placed in the electronic public docket. Information claimed as CBI and other information for which disclosure is restricted by statute is not available for public viewing in the electronic public docket. EPA's policy is that copyrighted material is not placed in the electronic public docket but is available only in printed, paper form in the official public docket.

To the extent feasible, publicly available docket materials will be made available in the electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in the electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Section I.B.1. above. EPA intends to work towards providing electronic access in the future to all of the publicly available docket materials through the electronic public docket.

For additional information about the electronic public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

II. Background

A. What Is Transportation Conformity?

Transportation conformity is required under Clean Air Act section 176(c) (42 U.S.C. 7506(c)) to ensure that federally supported highway and transit project activities are consistent with (''conform to'') the purpose of the state air quality implementation plan (SIP). Conformity currently applies to areas that are designated nonattainment and those redesignated to attainment after 1990 (''maintenance areas'' with plans developed under Clean Air Act section 175A) for the following transportation-related criteria pollutants: Ozone, particulate matter ($PM_{2.5}$ and PM_{10}),[1] carbon monoxide (CO), and nitrogen dioxide (NO_2). Conformity to the purpose of the SIP means that transportation activities will not cause or contribute to new air quality violations, worsen existing violations, or delay timely attainment of the relevant national ambient air quality standards (NAAQS or ''standards'').

EPA's transportation conformity rule establishes the criteria and procedures for determining whether transportation activities conform to the SIP. EPA first promulgated the transportation conformity rule on November 24, 1993 (58 FR 62188), and subsequently published several other amendments. See EPA's Web site at *http://www.epa.gov/otaq/stateresources/transconf/index.htm* for further information.

B. Why Are We Issuing This Final Rule?

On August 10, 2005, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) was signed into law (Pub. L. 109–59). SAFETEA–LU section 6011 amended Clear Air Act section 176(c) by:

- Changing the required frequency of transportation conformity determinations from three years to four years;
- Providing two years to determine conformity after new SIP motor vehicle emissions budgets are either found adequate, approved or promulgated;
- Adding a one-year grace period before the consequences of a conformity lapse apply;
- Providing an option for reducing the time period addressed by conformity determinations;
- Streamlining requirements for conformity SIPs; and
- Providing procedures for areas to use in substituting or adding transportation control measures (TCMs) to approved SIPs.

SAFETEA–LU section 6011(g) requires that EPA revise the transportation conformity rule as necessary to address the new statutory provisions. This final rule addresses the relevant changes that SAFETEA–LU made to the Clean Air Act.

This final rule replaces the joint EPA–DOT interim guidance issued February 14, 2006, which provided guidance to areas subject to transportation conformity on implementing the changes to the Clean Air Act made by SAFETEA–LU.[2] This final rule is consistent with the February 2006 guidance.

DOT is our federal partner in implementing the transportation conformity regulations. EPA has consulted with DOT on the development of this final rule, and DOT concurs with its content.

EPA received comments on the proposed rule from 16 different entities, though some commenters submitted comments jointly. Commenters included state DOTs, MPOs, state and local air quality agencies, government associations, and industry associations.

The majority of commenters supported EPA's proposal in general, and specific provisions in particular, which are discussed below. EPA is addressing these and other comments in the relevant sections of the preamble and in the responses to comments document, which can be found in the public docket for this final rule.

III. Frequency of Conformity Determinations

A. Description of Final Rule

EPA is changing § 93.104(b)(3) to require that the MPO and DOT determine conformity of a transportation plan at least every four years, and § 93.104(c)(3) to require that the MPO and DOT determine conformity of a transportation improvement program (TIP) at least every four years. The pre-existing regulations required these determinations to be made at least every three years.

B. Rationale and Response to Comments

These changes to § 93.104 are needed to make the conformity regulation consistent with the law. In SAFETEA–LU, Congress amended Clean Air Act section 176(c)(4)(D)(ii) to require that conformity be determined with a frequency of four years, unless the MPO decides to update its transportation plan or TIP more frequently, or the MPO is required to determine conformity in response to a trigger (see Section IV.). The Clean Air Act previously required transportation plan and TIP conformity to be determined every three years. These Clean Air Act provisions have been in effect as of August 10, 2005.

Several commenters voiced support for this change because it is consistent with the Clean Air Act, as amended by SAFETEA–LU. One commenter noted that this change will be helpful particularly to small communities. One commenter opposed the proposal because the commenter believes that having more frequent conformity determinations may be important in areas with significant on-road mobile source emissions.

As already stated, and as other commenters noted, this change is

[1] 40 CFR 93.102(b)(1) defines $PM_{2.5}$ and PM_{10} as particles with an aerodynamic diameter less than or equal to a nominal 2.5 and 10 micrometers, respectively.

[2] Note that the TCM portion of the February 14, 2006, guidance is not covered in today's final rule, but in an updated guidance document that will be available on EPA's Web site at *http://www.epa.gov/otaq/stateresources/transconf/policy.htm*.

necessary to make the regulation consistent with the law. Furthermore, EPA believes that despite this change in the required frequency of conformity determinations, the transportation conformity program still achieves its purpose in ensuring transportation actions conform to the SIP. Transportation plans and TIPs must still conform before they are adopted.

Several commenters suggested that EPA also change ''three years'' to ''four years'' in § 93.104(d) of the conformity rule. This provision describes the circumstances when a conformity determination for a project is needed, one of which is when more than three years have elapsed since the most recent major step to advance the project. Commenters requested that three years be changed to four years to be consistent with SAFETEA–LU provisions of determining conformity on TIPs and transportation plans every four years.

EPA is not changing § 93.104(d) in this rulemaking. First, this change was not proposed, as it was not required by the Clean Air Act as amended by SAFETEA–LU. SAFETEA–LU aligned transportation plan, TIP, and the frequency of transportation plan and TIP conformity determinations to create efficiencies in the overall planning process, rather than to allow more time when project phases are delayed.

Second, the conformity rule requires that a new conformity determination be done for a project if more than three years have elapsed since a major step has occurred to be consistent with the regulations under the National Environmental Policy Act (NEPA), rather than with the frequency of conformity determinations for transportation plans and TIPs. The NEPA regulations require reevaluation of NEPA documents for projects which have not had major action for three years. Please refer to ''H. Time Limit on Project-Level Determinations'' in the preamble of the November 24, 1993, conformity rule (58 FR 62200) for more explanation of this point.

C. Overlap With Transportation Planning Frequency Requirements

In addition to changing the required frequency of conformity determinations from at least every three years to every four years, SAFETEA–LU also changed the required frequency for updating transportation plans and TIPs for transportation planning purposes. Prior to SAFETEA–LU, transportation plans in nonattainment and maintenance areas had to be updated every three years and TIPs updated every two years; now both transportation plans and TIPs must be updated every four years in these areas. However, MPOs can voluntarily update their transportation plans and TIPs more frequently. Consequently, conformity may still need to be determined more frequently than every four years, because an updated or amended transportation plan or TIP still must conform before it is adopted, regardless of the last time a conformity determination was done. Further discussion of the implementation of the SAFETEA–LU statewide and metropolitan transportation planning requirements can be found in DOT's February 14, 2007, final rulemaking on metropolitan and statewide transportation planning (72 FR 7224).

Today's change to the required frequency of transportation plan and TIP conformity determinations does not change other details for implementing conformity and planning frequency requirements. Both the transportation planning update clock and the conformity update clock continue to be reset on the date of the FHWA and FTA conformity determination for the respective transportation plan and/or TIP. For more information, see DOT's May 25, 2001, guidance, available on EPA's Web site at *http://www.epa.gov/otaq/stateresources/transconf/policy.htm* and on DOT's Web site at *http://www.fhwa.dot.gov/environment/conformity/planup_m.htm.*

D. Related Change: Consequences of a Control Strategy SIP Disapproval

1. Description of Final Rule

EPA is revising § 93.120(a)(2) to allow projects in the first four years of the conforming transportation plan and TIP, rather than the first three years of the conforming transportation plan and TIP, to proceed after final EPA disapproval of a control strategy SIP without a protective finding, i.e., when a conformity freeze occurs. In this section of the regulation, EPA is changing the two instances of ''three years'' to ''four years,'' similar to the changes made in §§ 93.104(b)(3) and (c)(3), the other sections of the rule affected by the change in the required frequency of conformity determinations. Though the final regulation at § 93.120(a)(2) differs from the language that was proposed, it is the same in substance as the proposed rule.

2. Rationale and Response to Comments

EPA is making this change to be consistent with the general implementation of SAFETEA–LU, which requires transportation plans and TIPs to be updated every four years and requires TIPs to cover a period of four years. EPA had proposed to generalize this language to allow a project to proceed during a freeze if it was included in the conforming TIP in order to account for the transition to new SAFETEA–LU transportation planning requirements. EPA believed the proposed language would be useful during the transition to SAFETEA–LU's planning requirements. We believed that when the rule became final, some MPOs would still have three-year TIPs prior to developing four-year TIPs for SAFETEA–LU. See the preamble to the May 2, 2007, proposed rule (72 FR 24475) for EPA's full rationale. Several commenters supported the language we had proposed, because it accounted for the transition to SAFETEA–LU's planning requirements. EPA received no comments opposing it.

However, the transition period ended on July 1, 2007. While some areas may still have three-year TIPs today, these will all be replaced over time by four-year TIPs. EPA believes the better update to § 93.120(a)(2) is simply to change the instances of ''three years'' to ''four years,'' as it is more clear and more consistent with the prior regulatory language. If EPA disapproves a SIP without a protective finding in an area that still has a three-year TIP, only projects from the first three years of the conforming transportation plan and TIP could proceed, because the regulation states that projects must be in both the conforming transportation plan and TIP (except during the lapse grace period, discussed in Section V.E., below).

Today's final rule at § 93.120(a)(2) is consistent with the proposed rule for this section. Though the proposed language had eliminated the reference to a conforming transportation plan, EPA did not intend to change other rule requirements. In fact, EPA stated so in the preamble to the May 2, 2007, proposed rule:

> However, this proposed general language is not intended to change other rule requirements. Although EPA's change to § 93.120(a)(2) would no longer include the phrase ''conforming transportation plan,'' the requirements of § 93.114 continue to apply. Specifically, there must still be a currently conforming transportation plan in place to approve projects during a conformity freeze (except as noted in Section V.E., below). (72 FR 24475)

While it is the same in substance as the proposed rule language, the change to § 93.120(a)(2) in today's final rule is more clear, because it continues to state explicitly that a project must be in both the conforming transportation plan as well as conforming TIP. Note that Section V.E. discusses the exception to this requirement during the lapse grace

period, which is also included in today's final rule for § 93.120(a)(2).

IV. Deadline for Conformity Determinations When a New Budget Is Established

A. Description of the Final Rule

EPA is revising § 93.104(e), which requires a new transportation plan and TIP conformity determination to be made after actions that establish a new motor vehicle emissions budget for conformity, also known as ''triggers.'' The revision gives MPOs and DOT two years, increased from 18 months, to determine conformity of a transportation plan and TIP when a new budget is established. An MPO and DOT must make a conformity determination within two years of the effective date of:

- EPA's finding that a motor vehicle emissions budget(s) (''budget(s)'') in a submitted SIP is adequate (40 CFR 93.104(e)(1));
- EPA's approval of a SIP, if the budget(s) from that SIP have not yet been used in a conformity determination (40 CFR 93.104(e)(2)); and
- EPA's promulgation of a Federal implementation plan (FIP) with a budget(s) (40 CFR 93.104(e)(3)).

B. Rationale and Response to Comments

This change makes the conformity regulation consistent with the current law. In SAFETEA–LU, Congress amended the Clean Air Act to give MPOs and DOT two years before conformity must be determined in response to one of the conformity triggers above. Several commenters generally supported this change, noting that it is necessary to be consistent with the current law. This Clean Air Act provision has been in effect as of August 10, 2005.

The regulation's description of events that trigger a new conformity determination have not been changed because they were already consistent with the amendments made to the Clean Air Act in SAFETEA–LU, for the reasons described in the preamble to the May 2, 2007, proposed rule (72 FR 24475–24476). EPA also notes that no change is necessary for the point at which the two-year clocks begin. The two-year clocks begin on the effective date of EPA's adequacy finding or the effective date of EPA's SIP approval or FIP promulgation action. (For more details regarding the triggers, see Section III. of the August 6, 2002, final rule at 67 FR 50810 and Section XIX. of the July 1, 2004, final rule, at 69 FR 40050).

V. Lapse Grace Period

A. Description of the Final Rule

EPA is adding a one-year grace period before a conformity lapse occurs when an area misses an applicable deadline. The applicable deadlines are those that result from:

- The requirements to determine conformity of a transportation plan and TIP every four years under §§ 93.104(b)(3) and 93.104(c)(3) (see Section III.), and
- The requirement to determine conformity within two years of a trigger under § 93.104(e) (see Section IV.).

EPA notes that the regulatory changes discussed in Section V. of this preamble do not impact isolated rural nonattainment or maintenance areas, because these areas do not include an MPO with a transportation plan or TIP conformity determination that would lapse. Isolated rural areas continue to be covered by the requirements in 40 CFR 93.109(l).

To provide the rules to allow projects to meet conformity requirements [3] during the lapse grace period, EPA is adding a new provision to the regulation, § 93.104(f).

- New § 93.104(f)(1) allows non-exempt FHWA/FTA projects to be found to conform during the lapse grace period if they are included in the *currently conforming* transportation plan and TIP.
- New § 93.104(f)(2) allows non-exempt FHWA/FTA projects to be found to conform during the lapse grace period if they were included in the *most recent conforming* transportation plan and TIP. However, even though § 93.104(f)(2) allows a project to be found to conform when the transportation plan and TIP have expired, a project must also meet DOT's planning and other requirements to receive federal funding or approval.

Today's rulemaking does not change how exempt projects and traffic signal synchronization projects are addressed under the transportation conformity rule. These projects are able to proceed during the lapse grace period, and for that matter during a conformity lapse, because exempt projects and traffic signal synchronization projects do not require project-level conformity determinations per 40 CFR 93.126 and 93.128, respectively.

In addition, EPA is revising §§ 93.114, 93.115, and 93.121 by including a reference to § 93.104(f) to account for the lapse grace period:

- Section 93.114 requires that there be a currently conforming transportation plan and TIP at the time of project approval, except during the lapse grace period, when a non-exempt project must come from the most recent conforming transportation plan and TIP. (A project must also meet DOT's planning and other requirements to receive Federal funding or approval. See Section V.C. below for further discussion.)
- Section 93.115 requires that non-exempt FHWA/FTA projects come from a conforming transportation plan and TIP, except during the lapse grace period, when a project could come from the most recent conforming plan and TIP. (A project must also meet DOT's planning and other requirements to receive federal funding or approval. See Section V.C. below for further discussion.)
- Similarly, § 93.121 requires that regionally significant non-Federal projects either come from the currently conforming transportation plan and TIP, or the regional emissions analysis that supports such a transportation plan and TIP, except during the lapse grace period, when such projects could be approved if they are from the most recent conforming transportation plan and TIP, or the regional emissions analysis that supported the most recent conforming transportation plan and TIP.

Note that the lapse grace period only applies to transportation conformity, and not to DOT's transportation planning requirements. DOT and EPA agree that planning requirements still must be met during the lapse grace period in order for DOT to fund or approve a project as discussed further in C. of this section.

B. Rationale and Response to Comments

These changes are necessary to make the conformity regulation consistent with the amended law and the intentions of Congress. In SAFETEA–LU, Congress amended the Clean Air Act to provide a one-year grace period before the consequences of a conformity lapse apply in section 176(c)(9) and added a definition of ''lapse'' in section 176(c)(10). The changes to the law have been in effect as of August 10, 2005. See the preamble to the May 2, 2007, proposed rule (72 FR 24476–8) for EPA's full rationale supporting this provision of the final rule.

Six of the seven commenters who commented on the lapse grace period supported EPA's proposal. These commenters generally believe that EPA's proposal to incorporate the lapse grace period into the conformity rule is consistent with the Clean Air Act as amended by SAFETEA–LU. One commenter stated that the lapse grace period allows time and flexibility for

[3] By the phrase ''meet conformity requirements,'' EPA means that FHWA/FTA projects can be found to conform, and non-Federal projects can be approved.

areas to comply with Clean Air Act requirements. Another commenter who supported the lapse grace period specifically agreed with EPA's interpretation that Congress meant to allow conformity requirements to be satisfied for projects during the lapse grace period, even if there is no conforming transportation plan and TIP at the time. This commenter opined that any other interpretation renders Clean Air Act section 176(c)(9) meaningless.

Two commenters requested that EPA clarify the commenters' interpretation that the lapse grace period applies to projects not from a conforming transportation plan and TIP as long as the requirements of 40 CFR 93.115(b)(2) are addressed. EPA disagrees with the commenters' interpretation; merely meeting § 93.115(b)(2) and nothing more would not be sufficient for a project to proceed during the lapse grace period. To be found to conform during the lapse grace period, a project must be from a conforming transportation plan and TIP (§ 93.104(f)(1)), or from the most recent conforming transportation plan and TIP (§ 93.104(f)(2)).

Section 93.115(b) describes the circumstances under which a project is considered to be from a conforming transportation plan. Paragraph (b)(2) provides that if a project is not specifically identified in the transportation plan, it can be considered to be ''from'' the plan as long as it ''is consistent with the policies and purpose of the transportation plan and will not interfere with other projects specifically included in the transportation plan.''

A project that meets only the requirements of § 93.115(b)(2) can be considered to be from a conforming transportation plan. But to proceed during the lapse grace period, it must also be from a conforming or most recent conforming TIP as well, as required by Clean Air Act sections 176(c)(2)(D) and (c)(2)(C)(i).

The one commenter who opposed EPA's proposal for the lapse grace period thought that it was counter to EPA's mission to protect public health. The commenter stated that on-road mobile source emissions are important and thought that the lapse grace period would increase these emissions. In response, first EPA notes that Congress added the lapse grace period in its amendments to the Clean Air Act, and EPA is simply revising the regulations to make them consistent with the current law. Second, a project cannot actually proceed to completion unless there is a valid, i.e., currently conforming, TIP that also meets transportation planning requirements. Therefore, the project's emissions would have been considered in the conformity determination for this TIP, eliminating the possibility of unanticipated emissions increases.

C. How Does the Grace Period Work In Practice?

The one-year conformity lapse grace period begins when the conformity determination required for a transportation plan or TIP is not made by the applicable deadline. As described above, during the grace period, a project may meet conformity requirements as long as it was included in either the currently conforming transportation plan and TIP or the most recent conforming transportation plan and TIP and other project-level conformity requirements are met.

An FHWA/FTA project must also meet DOT's planning requirements to receive federal funding or approval. Specifically, 23 U.S.C. 134(j)(3) and 49 U.S.C. 5303(j)(3) require a TIP to be in place and 23 U.S.C. 135(g)(4) and 49 U.S.C. 5304(g)(4) require a statewide TIP (STIP) to be in place for DOT to authorize transportation projects. The STIP contains all of the metropolitan area TIPs in the state.

Three specific scenarios are presented below to show how expiration of the transportation plan and/or STIP/TIP at the time of the missed deadline affects the ability to advance FHWA/FTA projects during the conformity lapse grace period.[4]

Scenario 1: If the transportation plan has expired, but the STIP/TIP are still in effect, FHWA/FTA can continue to authorize and take action on projects in the STIP/TIP throughout the duration of the grace period or the duration of the STIP/TIP, whichever is shorter. The TIP and affected portion of the STIP cannot be amended once the transportation plan expires. Prior to transportation plan expiration, an MPO and state should ensure that the STIP/TIP include the desired projects from the transportation plan to continue to operate during the conformity lapse grace period.[5]

Scenario 2: If the transportation plan is still in effect, but the STIP/TIP have expired, FHWA/FTA cannot authorize FHWA/FTA projects. In order to advance projects, a new STIP/TIP would have to be developed that contains only projects that are consistent with the transportation plan. A conformity determination would have to be made for the new TIP unless it includes only exempt projects, traffic signal synchronization projects, or TCMs in an approved SIP. For example, if a new TIP included a non-exempt project from later years of the transportation plan, the new TIP would require a conformity determination. (However, the determination could rely on the previous regional emissions analysis as long as the requirements of 40 CFR 93.122(g) are met.)

Scenario 3: If both the transportation plan and the STIP/TIP have expired, FHWA/FTA will not authorize projects under the planning regulations.

Regardless of the scenario, in addition to transportation planning requirements, project-level conformity requirements must also be met during the lapse grace period including any required hot-spot analysis. Refer to the Table 1 in 40 CFR 93.109 for the conformity criteria and procedures that apply to projects.

D. Newly Designated Nonattainment Areas

The lapse grace period provision in Clean Air Act section 176(c)(9) does not apply to the deadline for newly designated nonattainment areas to make the initial transportation plan/TIP conformity determination within 12 months of the effective date of the nonattainment designation. The lapse grace period in Clean Air Act section 176(c)(9) applies prior to when a lapse occurs, and Clean Air Act section 176(c)(10) and 40 CFR 93.101 define the term ''lapse'' to mean that the conformity determination for a transportation plan or TIP has expired. Therefore, the lapse grace period does not apply unless an area has already had a conforming transportation plan and TIP that has expired; it does not apply to a newly designated area that has not yet made its initial conformity determination for a transportation plan and TIP for a new pollutant or air quality standard.

Although the lapse grace period does not apply to newly designated areas, these areas already have similar existing flexibility because Clean Air Act section 176(c)(6) and 40 CFR 93.102(d) give newly designated areas one year before conformity applies, starting from the effective date of final nonattainment designation.[6]

[4] These scenarios are consistent with those highlighted in EPA and DOT's joint February 14, 2006, interim guidance, which is superceded by today's final rule.

[5] For example, an MPO may want to amend its TIP before the transportation plan expires to allow projects from the fifth year of the transportation plan to proceed during the lapse grace period. The conformity determination for such an amended TIP would have to be made before the lapse grace period begins, but the determination could rely on the previous regional emissions analysis as long as the requirements of 40 CFR 93.122(g) are met.

[6] This one-year grace period for newly designated areas most recently applied to the areas designated

Although the statutory and regulatory definitions of lapse do not apply to newly designated areas, once conformity applies, the identical restrictions of a conformity lapse will exist for any newly designated nonattainment area that does not have a conforming transportation plan and TIP in place one year after the effective date of EPA's designation. EPA and DOT will continue to use the term ''lapse'' informally to describe these situations.

E. Conformity Freezes

EPA also notes the interaction of conformity lapse grace periods and conformity freezes. A conformity freeze occurs if EPA disapproves a control strategy SIP without a protective finding for the budgets in that SIP (see § 93.120(a)(2)).[7] During a freeze, some projects can be advanced, but the area cannot adopt a new transportation plan or TIP until a new SIP is submitted with budgets that EPA approves or finds adequate. If conformity of a transportation plan and TIP has not been determined using a new control strategy SIP with budgets that EPA approves or finds adequate within two years of EPA's SIP disapproval, highway sanctions apply (under Clean Air Act section 179(b)(1)) and the freeze becomes a lapse.

The lapse grace period would apply during a freeze only if the transportation plan/TIP expire before highway sanctions apply. The lapse grace period would apply in this case because the grace period applies when an area misses an applicable deadline to determine conformity for the transportation plan and TIP. The transportation plan and TIP would remain in a freeze even once the lapse grace period begins, and would remain frozen until either a conformity determination is made to new adequate or approved SIP budgets as described above, or highway sanctions apply.

An area that is in a conformity freeze and subsequently enters the lapse grace period would lapse at the end of the grace period (one year after the missed deadline), or when highway sanctions apply, whichever comes first. As described above, however, a project must also meet DOT's planning and other requirements to receive Federal funding or approval during the lapse grace period.

If a freeze becomes a lapse because two years transpire from the effective date of EPA's disapproval of the SIP (when highway sanctions are applied), the area cannot use the lapse grace period. A lapse that occurs because two years have transpired since EPA's disapproval of a SIP is not a lapse that results from missing an applicable deadline to determine conformity. Thus, the lapse grace period would not apply by its own terms when sanctions are applied.

VI. Timeframes for Conformity Determinations

A. Overview

Through SAFETEA–LU, Congress added new paragraph (7) to Clean Air Act section 176(c) to allow areas to elect to shorten the period of time addressed by their transportation plan/TIP conformity determinations, or ''timeframe.'' Prior to this change, every conformity determination for a transportation plan and TIP has had to cover the entire timeframe of the transportation plan. Transportation plans cover a period of 20 years or longer. Because of the requirement to determine conformity of the entire transportation plan, the last year of the transportation plan has had to be analyzed in all transportation plan or TIP conformity determinations, as well as other earlier years in the timeframe of the transportation plan.

Under the amended Clean Air Act, an MPO continues to demonstrate conformity for the entire timeframe of the transportation plan unless the MPO elects to shorten the conformity timeframe. An election to shorten the conformity timeframe could be made only after consulting with the state and local air quality agencies[8] and soliciting public comment and considering such comments. If an MPO makes this election, the conformity determination does not have to cover the entire length of the transportation plan, but in some cases an informational analysis is also required.

This provision giving areas the option to shorten their conformity timeframe took effect on August 10, 2005, when SAFETEA–LU became law. Note, however, that transportation plan/TIP conformity determinations must cover the entire length of the transportation plan unless an election is made to shorten the timeframe.

Today EPA is finalizing several changes in the regulatory language to provide the rules for shortening the conformity timeframe, and most of these changes are found in § 93.106(d). This section discusses these changes and is organized as follows:

- Metropolitan areas that do not have an adequate or approved second maintenance plan (Section VI.B.).
- Metropolitan areas with adequate or approved second maintenance plans (Section VI.C.).
- How elections are made in metropolitan areas to either shorten the conformity timeframe, or revert to the original conformity timeframe once the timeframe has been shortened (Section VI.D.).
- Isolated rural areas (Section VI.E.).
- Conformity implementation in all areas under a shortened conformity timeframe, including which years must be analyzed (Section VI.F.).

B. Timeframe Covered by Conformity Determinations in Metropolitan Areas Without Second Maintenance Plans

1. Description of Final Rule

Transportation plan and TIP conformity determinations must cover the timeframe of the transportation plan, unless an MPO elects to shorten the timeframe. This requirement is found in § 93.106(d)(1). In areas without an adequate or approved second maintenance plan (i.e., a maintenance plan addressing Clean Air Act section 175A(b)), the Clean Air Act requires that a shortened conformity determination must extend through the latest of the following years:

- The first 10-year period of the transportation plan;
- The latest year for which the SIP (or FIP) applicable to the area establishes a motor vehicle emission budget; or
- The year after the completion date of a regionally significant project if the project is included in the TIP, or the project requires approval before the subsequent conformity determination.

These requirements are found in EPA's regulation at § 93.106(d)(2)(i). The final language in § 93.106(d)(2)(i) is consistent with the proposed language, although minor clarifications have been made in response to comments. Specifically, the regulation at § 93.106(d)(2)(i) states, ''The shortened timeframe of the conformity determination must extend at least to the latest of the following years.'' The proposed wording was, ''The shortened timeframe of the conformity determination must be the longest of the following.''

for the 8-hour ozone and $PM_{2.5}$ standards. All of these metropolitan areas have at this point determined transportation plan/TIP conformity.

[7] Such disapprovals occur infrequently; EPA has only disapproved SIPs without a protective finding in three instances since the 1997 conformity rule was promulgated.

[8] The amendment to the Clean Air Act that allows areas to shorten the timeframe of conformity determinations, Clean Air Act section 176(c)(7), requires the MPO to consult with ''the air pollution control agency.'' For the reasons explained in the May 2, 2007, proposed rule (72 FR 24479 and 27780), EPA is using the equivalent term ''state and local air quality agencies'' in this preamble and final rule.

The final regulation at § 93.106(d)(2)(i)(B) is also slightly different than proposed, but the same in substance as the proposed rule. This provision now reads, ''The latest year for which an adequate or approved motor vehicle emissions budget(s) is established in a submitted or applicable implementation plan'' rather than the proposed wording, ''The latest year in the submitted or applicable implementation plan that contains an adequate or approved motor vehicle emissions budget(s).''

Note that an MPO that has shortened its conformity timeframe does not choose which of these three timeframes it prefers to examine in the conformity determination; it must examine the longest of them. Such an MPO would have to determine which timeframe is the longest for each conformity determination, as the longest timeframe could change from determination to determination, because for example new budgets have been established or new regionally significant projects have been added to the TIP since the previous conformity determination.

2. Rationale and Response to Comments

These provisions to allow MPOs to shorten the timeframe covered by a conformity determination are necessary to make the conformity regulation consistent with the law. In SAFETEA–LU, Congress amended the Clean Air Act by adding section 176(c)(7), which allows MPOs to elect to shorten the timeframe of conformity determinations. EPA's regulation at § 93.106(d)(1) requires that conformity determinations cover the timeframe of the transportation plan unless the MPO makes an election to shorten the timeframe. The Clean Air Act section 176(c)(7)(A) specifically states, ''Each conformity determination * * * shall require a demonstration of conformity for the period ending on either the final year of the transportation plan, or at the election of the metropolitan planning organization, * * *'' a shorter timeframe.

EPA's regulation at § 93.106(d)(2)(i), which requires that a shortened timeframe must cover the longest of the three periods specified, also comes directly from the Clean Air Act. Specifically, section 176(c)(7)(A) states that a shortened conformity determination must cover:

> The longest of the following periods:
> (i) The first 10-year period of any such transportation plan.
> (ii) The latest year in the implementation plan applicable to the area that contains a motor vehicle emissions budget.
> (iii) The year after the completion date of a regionally significant project if the project is included in the transportation improvement program or the project requires approval before the subsequent conformity determination.

EPA received several comments in support of the flexibility to shorten the timeframe of the conformity determination.

EPA is clarifying the language in § 93.106(d)(2)(i) and § 93.106(d)(2)(i)(B) from the proposal based on the suggestion of three commenters, although the meaning is the same as in the proposal. As a result, the final rule clarifies that the shortened timeframe must extend through the latest year of the three periods. EPA modified some of the commenters' suggested language to be consistent with the statute.

The same commenters also suggested we change the language in § 93.106(d)(2)(i)(B) to refer to the latest year for which a budget is established, rather than the latest year that ''contains'' a budget. EPA has taken this suggestion because this language likewise improves clarity.

C. Timeframe of Conformity Determinations in Metropolitan Areas With Second Maintenance Plans

1. Description of Final Rule

In areas that have an adequate or approved maintenance plan under Clean Air Act section 175A(b), transportation plan and TIP conformity determinations must cover the timeframe of the transportation plan unless an MPO elects to shorten the timeframe. This requirement is found in § 93.106(d)(1). Section 175A(b) of the Clean Air Act is the provision that describes the submission of a maintenance plan that covers the second ten years of the maintenance period. If an MPO with an adequate or approved second maintenance plan elects to shorten the timeframe, transportation plan and TIP conformity determinations would cover the period of time through the end of the maintenance period, that is, the period of time covered through the second maintenance plan. This period of time is in contrast to the longest of the three periods discussed in Section VI.B. for areas that do not have an adequate or approved second maintenance plan. The regulatory language for shortening the timeframe in areas with second maintenance plans is found in § 93.106(d)(3).

2. Rationale and Response to Comments

This rule provision for shortening the conformity timeframe in metropolitan areas with an adequate or approved second maintenance plan results directly from the Clean Air Act as amended by SAFETEA–LU. Clean Air Act section 176(c)(7)(C) specifically says that in areas with a second maintenance plan, a shortened conformity timeframe is ''required to extend only through the last year of the implementation plan required under section 175(A)(b)'' [sic] rather than the longest of the three periods established in Clean Air Act section 176(c)(7)(A).

Several commenters specifically noted their support for this provision. However, one commenter suggested that the proposed language for § 93.106(d)(2)(i) should be revised to be consistent with the fact that the Clean Air Act as amended by SAFETEA–LU allows areas with adequate or approved second 10-year maintenance plans to determine conformity through only the last year of the maintenance plan. EPA's proposed regulation was consistent with the statutory provision for areas with adequate or approved second maintenance plans, and the final rule is as well. EPA believes this commenter may have misread the organization of this section, as we covered areas without second maintenance plans in § 93.106(d)(2), and areas with second maintenance plans in § 93.106(d)(3).

D. Process for Elections

1. Description of Final Rule

First, before an MPO elects to shorten the conformity timeframe, it has to consult with state and local air quality planning agencies, solicit public comment, and consider those comments. These requirements are found in § 93.106(d)(2). Consultation with the state and local air agencies would occur early in the decision-making process.

Second, once an MPO makes an election to shorten the period of time addressed in its transportation plan/TIP conformity determinations, the election remains in effect until the MPO elects otherwise. An MPO would make its election only once for a pollutant or pollutants and any relevant precursors, unless it chooses to elect otherwise in the future. An MPO that has elected to shorten the timeframe of conformity determinations that wants to revert to analyzing the full timeframe of the transportation plan must consult with the state and local air quality agencies, solicit public comments, and consider such comments before doing so. These provisions are found in § 93.106(d)(4).

EPA believes that consultation with the state and local air quality agencies on shortening the timeframe would typically occur in the context of the

normal interagency consultation process. EPA believes that for this consultation to be meaningful, it needs to occur at an early stage in the decision-making process. Therefore, consultation should occur when the MPO begins to consider shortening the timeframe. For example, it may be appropriate to discuss an election to shorten the conformity timeframe in the preliminary stages of developing the regional emissions analysis.

MPOs should follow their normal process for public participation regarding conformity actions when electing to shorten their conformity timeframe. MPOs are not required to revise their public participation/involvement procedures required by 23 U.S.C. 134(i)(5) to address public consultation on shortening the area's conformity timeframe.

MPOs are encouraged to make their elections prior to the start of the public comment period for their next conformity determination. Making the election prior to the start of the public comment period for the next conformity determination ensures that the public will understand that future conformity determinations will address a shorter period of time. Doing so will also allow the MPO to develop its next conformity determination in a more efficient manner and avoid running analyses for additional years, as described in the following paragraph.

However, there may be instances when an MPO will want to take public comments on the election to shorten the conformity timeframe at the same time that it is taking public comment on a conformity determination. In those cases, the conformity information presented to the public should include both a regional emissions analysis reflecting the election of a shorter timeframe and a regional emissions analysis that reflects the full length of the transportation plan. EPA recommends that both a shortened and a full-length analysis be included so that the MPO can complete its conformity determination according to its desired schedule, even if it receives negative public comment about shortening the timeframe and decides not to do so.

2. Rationale and Response to Comments

General process. Clean Air Act section 176(c)(7)(A) and (C) are the sections of the statute that allow elections to shorten the conformity timeframe. Both of these sections allow such elections to be made only ''after consultation with the air pollution control agency and solicitation of public comments and consideration of such comments.'' The Clean Air Act refers only to consultation with the air agency or agencies and does not require their concurrence.

A definition of ''air pollution control agency'' has been added at Clean Air Act section 176(c)(7)(E), which EPA interprets to mean the relevant state and local air quality agencies that have regularly participated in the conformity consultation process, as discussed in the preamble to the May 2, 2007, proposed rule (72 FR 24480).

EPA's regulation states that once an election to shorten the timeframe is made, it would remain in effect until the MPO elects otherwise, because that statement is specifically included in the statute. Clean Air Act section 176(c)(7)(D) states, ''Any election by a metropolitan planning organization under this paragraph shall continue to be in effect until the metropolitan planning organization elects otherwise.''

Changing previous elections. EPA requested comment on two options for the process that MPOs must follow if they have shortened the conformity timeframe and want to revert back to determining conformity for the full length of the transportation plan. Option A would have required MPOs to consult with state and local air agencies and solicit and consider public comment before reverting back to determining conformity for the full length of the transportation plan; Option B would have allowed MPOs to revert to the full timeframe without additional consultation or public comment.

EPA is finalizing Option A. As explained in the proposal, Clean Air Act section 176(c)(7)(D) states that a shortened timeframe remains in effect unless an MPO ''elects otherwise.'' An ''election'' to shorten the timeframe under section 176(c)(7) requires consultation with the state and local air quality agencies, solicitation of public comment and consideration of any comments received. EPA's interpretation is that an election to revert to determining conformity for the entire length of the transportation plan is an election under this section and therefore also includes consultation with the state and local air pollution control agencies, solicitation of public comment, and consideration of those comments. Since the Clean Air Act uses the same term—''election''—in both subsections, it is reasonable to conclude that the same process should be followed for both actions.

However, we expect the resource burden of this requirement to be minimal. MPOs can limit the additional burden of consultation with state and local air agencies and solicitation and consideration of public comment by using procedures developed to meet existing conformity requirements. Consultation with the state and local air quality planning agencies must already occur on the conformity determination within the interagency consultation process. Similarly, the MPO must already seek public comment on the conformity determination, according to the requirements in 40 CFR 93.105(e). By relying on these existing consultation procedures, the MPO could avoid the additional resource costs associated with running another interagency consultation process or full public comment process for electing to revert to the full conformity timeframe.

Two trade associations supported Option A, and stated that their members appreciate the opportunity to comment on significant decisions made by MPOs that have the potential to impact transportation projects or an area's ability to move forward with its transportation plans. These commenters thought that the public comment period should occur early in the conformity process so that conformity timing would not be negatively impacted. EPA appreciates these comments and supports the ability of the public to comment on decisions within the transportation conformity process that affect them.

A couple of commenters supported Option B, allowing an MPO to revert to a full-plan conformity timeframe without additional consultation or solicitation of public comment. Commenters opined that consultation and public comment are already required by 40 CFR 93.105, and those requirements already ensure that state and local air agencies will be consulted before any decisions are made. While MPOs can use these existing consultation and public comment provisions when reverting to the full transportation plan length timeframe, EPA is finalizing Option A so that MPOs will specifically solicit comment on the length of the conformity timeframe within these existing processes.

Other commenters offered an alternative option of using the established interagency consultation process to decide if a new public comment period should be required before an area elects to revert back to determining conformity for the entire timeframe of the transportation plan. The commenters suggested that this option would allow areas the flexibility to decide if a new public comment period is needed, while minimizing resource costs.

EPA did not finalize these commenters' suggestion because it would have required MPOs to consult

with a more extensive set of agencies to return to the full conformity timeframe than required by the statute when shortening the timeframe in the first place. When an MPO elects to shorten the timeframe, the Clean Air Act requires consultation with the state and local air agencies. Under the commenters' suggestion, before electing to revert to the full timeframe, MPOs would have to consult not only with state and local air agencies, but also EPA, DOT, and state and other local transportation agencies (e.g., transit agencies), because the interagency consultation process includes all of these agencies. This additional consultation is beyond what is required by this section of the statute.

As stated above, the existing interagency consultation process can be used to fulfill the requirement for consultation with state and local air quality agencies, because the MPO will be meeting with or speaking to representatives of these agencies in the context of the interagency consultation process. However, EPA believes that consulting with the relevant air agencies within the existing interagency consultation process is different, and less burdensome, than consulting with every agency involved in the interagency process. Second, the statute does not separate the interagency consultation and public comment processes as suggested by the commenters. The Clean Air Act section 176(c)(7) requires both consultation and public involvement whenever a timeframe is shortened, rather than consultation without public involvement. Rather than having agencies decide if the public would benefit by commenting, EPA believes the better interpretation of Congress' intent is to offer the public the opportunity to comment in all cases.

Placement in regulatory text. EPA is placing the requirements for state and local air quality agency consultation and public comment for shortening the conformity timeframe in § 93.106 because this type of consultation would only occur when the MPO is considering electing to shorten the timeframe. Furthermore, placing these requirements in § 93.106, rather than in 40 CFR 93.105, assures that no states with approved conformity SIPs have to amend them to add this provision. (See Section VII. for more information about the requirements for conformity SIPs.) EPA received no comments about this placement. See the preamble to the May 2, 2007, proposed rule (72 FR 24481) for EPA's full rationale.

E. Isolated Rural Nonattainment and Maintenance Areas

1. Description of Final Rule

Isolated rural nonattainment and maintenance areas do not have MPOs and are not required to prepare transportation plans or TIPs (40 CFR 93.101). Projects in these areas are generally included in the long-range statewide transportation plan and the statewide TIP. Isolated rural areas are not ''donut areas.'' [9]

The final rule gives isolated rural nonattainment and maintenance areas the flexibility to shorten the conformity timeframe in the same manner as metropolitan areas. The requirements for shortening the conformity timeframe in isolated rural areas are identical to the requirements in metropolitan areas, except the entity that would make the election to shorten the timeframe in an isolated rural area is the state DOT, rather than the MPO. The rule accomplishes this result by including a sentence in § 93.109(l)(2)(i) that says, ''When the requirements of § 93.106(d) apply to isolated rural areas, references to ''MPO'' should be taken to mean the state department of transportation.''

2. Rationale and Response to Comments

EPA believes it is appropriate to extend this flexibility to isolated rural areas to be consistent with how the conformity rule has been implemented in isolated rural areas. The Clean Air Act amendment made by SAFETEA-LU allowing areas to shorten their conformity timeframes does not prohibit its use in isolated rural areas. In general, most aspects of the conformity regulation apply consistently to metropolitan and isolated rural areas. Where there are differences, the differences have given isolated rural areas additional flexibility. See the preamble to the May 2, 2007, proposed rule (72 FR 24482) for EPA's full discussion of why EPA concludes it is appropriate to give isolated rural areas the flexibility to shorten their conformity timeframe.

Seven commenters supported allowing isolated rural areas to shorten the timeframe of conformity determinations, and none opposed it. Commenters generally agreed with EPA's rationale that Congress did not prohibit extending the flexibility to isolated rural areas, and that these areas are treated much like MPOs throughout the rest of the conformity rule. One commenter noted that extending this flexibility to isolated rural areas will have no impact on project-level requirements in these areas.

EPA proposed two options for the entity that would make the election in isolated rural areas: Either the state DOT or the project sponsor, and solicited input on whether there are any other alternatives. Six commenters supported the state DOT option, and two supported the project sponsor option; no alternative entities were suggested.

EPA believes that assigning the ability to elect to shorten the conformity timeframe to the state DOT makes the most sense. First, the state DOT prepares the statewide transportation plan and the statewide TIP and therefore in this regard, the state DOT serves a function in an isolated rural area that is similar to an MPO. Two commenters that supported the state DOT option cited this reason as well. Also, the state DOT may be better able to coordinate the consultation necessary to make an election with the state and local air quality planning agencies and with the public than any other entity in an isolated rural area. One commenter noted that given the consultation and public participation requirements associated with preparing transportation planning documents, the state DOT would be in the best position to satisfy similar requirements for electing to shorten the timeframe.

Though the state DOT is typically the project sponsor who prepares the conformity determination, several commenters were concerned about the possibility of there being more than one project sponsor in an area. Commenters noted that there may be multiple small entity project sponsors in an area, which could possibly lead to conflicts. A couple of commenters thought that the project sponsor option could result in confusion, inconsistent decisions in a state, and unpredictability.

The two commenters that supported the project sponsor option thought that project sponsors would be more closely attuned to local concerns. However, these commenters recognized that if there were multiple project sponsors, conflicts could arise, and recommended that in those cases, the state DOT should have the ability to shorten the timeframe. In considering these comments, EPA solicited input from EPA and DOT field offices, and concluded that in all recent cases, the state DOT is in fact the project sponsor for all FHWA/FTA projects in isolated rural areas. These areas are different than donut areas where county agencies sometimes are the project sponsor.

[9] Donut areas are defined as ''geographic areas outside a metropolitan planning area boundary, but inside the boundary of a nonattainment or maintenance area that contains any part of a metropolitan area(s)...'' (40 CFR 93.101).

Finally, EPA believes it appropriate to name the state DOT as the entity with the ability to shorten the timeframe in an isolated rural area for specificity, because the state DOT is already relied upon in the conformity rule and guidance for isolated rural area conformity requirements.

F. Specific Analysis Requirements Under a Shortened Timeframe

1. Description of Final Rule

EPA is including most of the necessary regulatory language for shortening the conformity timeframe within § 93.106, and is also updating §§ 93.118 and 93.119. Note that these provisions apply to both metropolitan and isolated rural areas.

- First, § 93.106 is being renamed as ''Content of transportation plans and timeframe of conformity determination.''
- Second, § 93.106(a)(1) is being amended to update the horizon years that apply when an area shortens the conformity timeframe. (Section 93.106(a)(1) only applies to serious, severe or extreme ozone and serious CO nonattainment areas with urbanized populations greater than 200,000.)
- Third, EPA is updating §§ 93.118 and 93.119 to indicate that particular years must be analyzed only if they are in the conformity timeframe and to include the requirements for any needed informational analyses.

Areas that use the budget test. In areas that have budgets that choose to shorten the timeframe, the requirements for demonstrating consistency with budgets, and analyzing specific years, are similar to requirements that have existed, and still exist, for areas that determine conformity for the full length of the transportation plan. Under a shortened timeframe, consistency with, and an analysis for, the attainment year is necessary only if the attainment year is both within the timeframe of the transportation plan and conformity determination. In addition, under a shortened timeframe, instead of analyzing the last year of the transportation plan for the conformity determination, the analysis must be done for the last year of the shortened timeframe.

In areas that do not have an adequate or approved second maintenance plan budget, the conformity determination must also be accompanied by a regional emissions analysis for the last year of the transportation plan, as well as for any year where the budgets were exceeded in a previous regional emissions analysis if that year is later than the shortened conformity timeframe. These regional emissions analyses must be done in a manner consistent with how the budget test is performed and all relevant requirements of the transportation conformity regulation (e.g., 40 CFR 93.110, 93.111, and 93.122). However, these analyses would be for informational purposes only, and emissions would not have to meet the budgets in these years. Documentation of any informational analysis should clearly state that its purpose is informational only, and that conformity is not required to be demonstrated for the last year of the transportation plan or any year where the budgets were exceeded in a previous regional emissions analysis if that year is later than the shortened conformity timeframe. There is no similar requirement for information-only analyses in areas with an adequate or approved second maintenance plan budget, for the reasons described below.

Areas that use the interim emissions tests. In areas that do not have budgets and use the interim emissions tests, the requirements for analysis years in areas that shorten their conformity timeframe are similar to the requirements in § 93.119 that have applied and still apply under a full transportation plan-length conformity determination. Under a shortened timeframe, instead of analyzing the last year of the transportation plan, the analysis would be done for the last year of the shortened timeframe.

The conformity determination must be accompanied by a regional emissions analysis for the last year of the transportation plan in areas that use the interim emissions tests. This regional emissions analysis would be for informational purposes only, and must be done in a manner consistent with all relevant requirements of the transportation conformity regulation (e.g., 40 CFR 93.110, 93.111, and 93.122). Note that there is no requirement for an informational regional emissions analysis for years where the interim tests were not met in a previous regional analysis, as there is for areas that use the budget test that do not have adequate or approved second maintenance plans.

EPA proposed three options for the informational analysis for the last year of the transportation plan in areas that use the interim emissions tests: To compare estimated emissions to the interim emissions test(s) used in the conformity determination (Option X), to compare estimated emissions to either interim emissions test (Option Y), or just to estimate emissions without comparing them to either test (Option Z). EPA is finalizing Option Z.

While the final rule requires only an estimate of regional emissions for the transportation system that would exist in the last year of the transportation plan, EPA encourages MPOs and state DOTs to present this informational analysis in context so that it is truly informative for members of the public or state and local air agencies who are reviewing it. One possible way of doing so is to present a summary table of all of the years for which an analysis was run, including both the years analyzed in the conformity determination and the last year analyzed for informational purposes only. Another possible method would be to present a comparison with the emissions level from the baseline year (e.g., 2002), as is done for the baseline year test under 40 CFR 93.119. Furthermore, it would also be acceptable for an area to complete the build/no-build test as well, if desired. Documentation of any informational analysis should clearly state that its purpose is informational only, and that conformity is not required to be demonstrated for the last year of the transportation plan.

2. Rationale and Response to Comments

General. EPA has made these changes to the conformity regulation because SAFETEA–LU has amended the Clean Air Act to allow MPOs to shorten their conformity timeframes. EPA is implementing the specific requirements of the new Clean Air Act provision in today's regulatory changes. These changes for required analysis years for conformity determinations with shortened timeframes are generally consistent with what has been current practice when conformity is determined for the full length of the transportation plan.

Given that the statute did not specify the years that must be analyzed in a conformity determination with a shortened timeframe, EPA reasonably concluded that the existing conformity requirements should apply. Therefore, in areas that use the budget test, a shortened conformity determination would have to include the attainment year if it is in the timeframe of the conformity determination, similar to the existing requirement to include the attainment year if it is in the timeframe of the transportation plan. In areas that use the interim emissions test, a shortened conformity determination would include an analysis year no more than five years into the future, just as full-length conformity determinations do.

In addition, regardless of the test used under a shortened timeframe, the last year of the conformity determination

would need to be analyzed. This requirement is similar to the existing one to analyze the last year of the transportation plan. Likewise, under a shortened timeframe, analysis years would be no more than ten years apart, just as under a full-length conformity determination. No comments were received on these general provisions.

Areas that use the budget test. If the conformity timeframe is shortened in an area that does not have an adequate or approved second maintenance plan, EPA's regulation requires that the conformity determination be accompanied by an informational analysis. The rule language for the regional emissions analysis for the last year of the transportation plan, and for any year where the budgets were exceeded in a previous regional emissions analysis if that year is later than the shortened conformity timeframe, is also based in the new statutory language. Clean Air Act section 176(c)(7)(B) requires that the conformity determination ''be accompanied by a regional emissions analysis'' for these years. Absent a definition for ''regional emissions analysis'' in the statute, EPA assumes that the phrase has its usual meaning in the context of transportation conformity. Therefore, these analyses need to be done in a manner consistent with all the general requirements of the conformity regulations for such analyses.

This same statutory language is the reason that these analyses do not need to meet the required conformity tests. The statutory language makes it clear that these emissions analyses only ''accompany'' the conformity determination, and thus are not part of the conformity determination. Therefore, EPA concludes that conformity need not be demonstrated with respect to these analyses.

Areas that use the interim emissions tests. In areas that use the interim emissions tests, an informational analysis is required only for the last year of the transportation plan. In contrast, areas that use budgets also must do an informational analysis for any years that exceeded the budgets in a prior analysis. Such years would be years that extended beyond the shortened timeframe of prior conformity determinations, which were analyzed for informational purposes only. This result is because Clean Air Act section 176(c)(7)(B) states that these information-only regional emissions analyses are to be done ''for the last year of the transportation plan and for any year shown to exceed emissions budgets by a prior analysis, if such year extends beyond'' the end of the shortened timeframe. Areas subject to the interim emissions tests for a given pollutant or precursor do not have budgets for that pollutant or precursor. Therefore, there will not be any years for which a prior analysis shows the budget will be exceeded, and as such there is no statutory requirement for these areas to perform an informational regional emissions analysis for any year other than the last year of the transportation plan.

EPA requested comment on three options for what an information-only regional emissions analysis would consist of in an area that uses the interim emissions test. Option X would have required that emissions be compared to the same interim emissions test (i.e., build/no-build and/or the baseline year test(s)) as is used in the conformity determination. Option Y would have required that emissions be compared to either interim emissions test. Option Z, which we finalized, requires simply the estimate of emissions in the last year of the transportation plan with no comparison to either interim emissions test.

The statutory language is ambiguous regarding the information-only regional emissions analysis prior to the establishment of SIP budgets. Section 176(c)(7)(B) states that the regional emissions analysis that accompanies the conformity determination must be performed for the last year of the transportation plan, but does not specify that the interim emissions tests be conducted. The Congressional report language for this section states, ''Generating this information will be helpful in ensuring that conformity is maintained,'' [10] but does not include any direction on how this goal should be met in those areas that use the interim emissions tests.

Five commenters provided opinions on these options. One commenter preferred Option X (i.e., to use the same test(s) as in the conformity determination) because it involves use of similar information to that presented elsewhere in the determination. This commenter thought that presenting the estimate of emissions in context of the interim emissions tests is helpful in informing state and local agencies and the public about future emissions trends, and is consistent with the intent of Congress.

The remaining four commenters preferred Option Z. Some of these commenters thought that comparisons to the interim emissions tests could be confusing to stakeholders if a test is not met for the informational analysis. One of these commenters thought that EPA should allow for the presentation of these results at the discretion of the MPO and state DOT after interagency consultation. This commenter thought that states and MPOs understand the local context for transportation conformity and are best suited for determining what information should be presented for the last year of the transportation plan under a shortened timeframe.

As described above, EPA is finalizing Option Z to be consistent with the statute, which does not require that the interim emissions tests be performed for informational purposes. Under the final rule, MPOs and state DOTs have the discretion in presenting the results of the informational analysis for the last year of the transportation plan, and EPA encourages them to provide useful information to other involved agencies and the public. See Section F.1. above for additional suggestions on how to present such analyses to the public.

Areas with second maintenance plans that shorten their conformity timeframe. No information-only analyses is required in areas with an adequate or approved second maintenance plan, given Clean Air Act section 176(c)(7)(C). The statute labels this section, which applies to areas that have an adequate or approved second maintenance plan, as ''Exception.'' EPA interprets section 176(c)(7)(C) to mean that areas with adequate or approved second maintenance plans that shorten their conformity timeframe do not have to comply with the requirements of Clean Air Act section 176(c)(7)(A) or (B), and section 176(c)(7)(C) itself does not require any informational analyses. Therefore, areas with a second maintenance plan that shorten their conformity timeframe do not have to perform a regional emissions analysis for the last year of their transportation plans, or for a year shown to exceed budgets by a prior analysis, as required by Clean Air Act section 176(c)(7)(B) for other areas that have shortened their timeframe. EPA received no comments on this particular point.

VII. Conformity SIPs

A. Description of Final Rule

EPA is changing 40 CFR 51.390 to streamline the requirements for state conformity SIPs. A conformity SIP is different from a control strategy SIP or maintenance plan, as a conformity SIP only includes state conformity procedures and not motor vehicle

[10] Joint Explanatory Statement of the Committee of Conference, ''Section 6011, Transportation Conformity,'' p. 1059.

emissions budgets or air quality demonstrations.

EPA is finalizing requirements for states to submit conformity SIPs that address only the following sections of the pre-existing federal rule. These three sections that need to be tailored to a state's individual circumstances:

- 40 CFR 93.105, which addresses consultation procedures;
- 40 CFR 93.122(a)(4)(ii), which states that conformity SIPs must require that written commitments to control measures be obtained prior to a conformity determination if the control measures are not included in an MPO's transportation plan and TIP, and that such commitments be fulfilled; and
- 40 CFR 93.125(c), which states that conformity SIPs must require that written commitments to mitigation measures be obtained prior to a project-level conformity determination, and that project sponsors comply with such commitments.

Prior to SAFETEA–LU, states were required to address these provisions as well as all other federal conformity rule provisions in their conformity SIPs. The rule had previously required states' conformity SIPs to include most of the sections of the federal rule verbatim.

In addition, EPA is also deleting the requirement for states to submit conformity SIPs to DOT. States must continue to submit conformity SIPs to EPA. EPA is also reorganizing the conformity SIP regulatory language to improve clarity and readability. The regulatory language in § 51.390 is re-ordered to more naturally fall into three topics: Purpose and applicability, conformity implementation plan content, and timing and approvals. The language retains existing requirements with appropriate modifications based on the new Clean Air Act amendment from SAFETEA–LU.

B. Rationale and Response to Comments

EPA is primarily changing § 51.390 to make the transportation conformity regulation consistent with the law, which has been in effect since August 10, 2005. In SAFETEA–LU, Congress amended the Clean Air Act so that states are no longer required to adopt much of the federal transportation conformity rule into their SIPs. Instead, Clean Air Act section 176(c)(4)(e) now requires states to include in their conformity SIPs:

> Criteria and procedures for consultation required by subparagraph (D)(i), and enforcement and enforceability (pursuant to section 93.125(c) and 93.122(a)(4)(ii) of title 40, Code of Federal Regulations) in accordance with the Administrator's criteria and procedures for consultation, enforcement, and enforceability.

Subparagraph (D)(i) in Clean Air Act section 176(c)(4) requires EPA to write regulations that address consultation procedures to be undertaken by MPOs and DOT with state and local air quality agencies and state DOTs before making conformity determinations. EPA's regulations governing consultation are found at 40 CFR 93.105. Therefore, in effect the statute now requires states to address and tailor only the three sections of the conformity rule noted above in their conformity SIPs.

EPA believes that the new conformity SIP requirements will reduce the administrative burden for state and local agencies significantly, because the new requirements will result in fewer required conformity SIP revisions in most areas. Four commenters supported these changes. Three commenters specifically agreed that these changes streamline the conformity SIP process and preclude the need for a state to update its conformity SIP each time the federal rule is revised. These commenters requested that EPA urge states to include only the three required sections in their conformity SIPs to minimize the possibility of having to revise the SIP when the federal rule is updated. EPA agrees with this point. However, the fourth commenter also requested that states still be able to incorporate the rest of the transportation conformity rule by reference. This option is further discussed in Section D.2 below.

EPA is removing the requirement for states to submit conformity SIPs to DOT to be consistent with SAFETEA–LU's changes. In revising the Clean Air Act's previous conformity SIP requirements, Congress did not retain the previous requirement that ''each State shall submit to the Administrator and the Secretary of Transportation * * * a revision to its implementation plan * * *.'' The new statutory language in Clean Air Act section 176(c)(4)(E) does not include this previous requirement, and therefore, we are removing this requirement to reduce state and local air agency processing of their conformity SIPs. However, EPA does not believe that this proposal will substantively change DOT's involvement in conformity SIP development. This does not change the existing conformity rule's requirement that EPA provide DOT with a 30-day comment period on conformity SIP revisions.

The re-organizational changes to § 51.390 are for clarity and readability and not related to changes in the law. EPA is making these changes to make this section more user-friendly, and the changes do not affect the substance of the pre-existing regulatory requirements.

C. How Does the Final Rule Impact States?

1. Areas That Have Never Submitted a Conformity SIP

States that have never submitted a conformity SIP are required to address only the three provisions noted above in their conformity SIPs according to any existing conformity SIP deadline (see D. of this section below).

2. Areas That Have Submitted a Conformity SIP That Was Never Approved

In some cases, states have submitted conformity SIPs to EPA for approval, but EPA has not yet acted on them. These states can write their EPA Regional Office and request that EPA approve only the three provisions that are required to be included in their SIPs and that EPA take no action on the remainder of the submission. States can also leave the full conformity SIP pending before EPA for rulemaking action. However, if EPA approves the full SIP, states could not apply any subsequent changes that EPA makes to the federal rule without first revising their state conformity SIP and obtaining EPA's approval.

3. Areas With Approved Conformity SIPs

States with EPA-approved conformity SIPs that decide to eliminate the provisions that are no longer mandatory would need to revise the SIP to eliminate those provisions. EPA would have to approve the changes to a state's conformity SIP through the **Federal Register** rulemaking process. Such a SIP revision should not be controversial because the provisions are no longer required by the Clean Air Act as amended by SAFETEA–LU. In addition, their elimination from a state's conformity SIP would not change conformity's implementation in practice because the federal conformity rule applies for any provision not addressed in a state's conformity SIP. States are encouraged to work with their EPA Regional Office as early in the process as possible to ensure the SIP submission meets all requirements and is fully approvable.

4. Areas That Submit a Partial Conformity SIP

A state may choose to submit a conformity SIP that addresses only one or two of the three required sections of the federal rule. In this situation, EPA

could approve the submitted section(s) if it sufficiently addresses the requirement it is intended to fulfill. However, the Clean Air Act as amended by SAFETEA–LU requires states to address all three sections in their conformity SIP, so a state that addresses only one or two of the requirements would still have an outstanding requirement.

D. When Are Conformity SIPs Due?

SAFETEA–LU did not create any new deadlines for conformity SIPs. Any nonattainment or maintenance area that has missed earlier deadlines to submit conformity SIP revisions (e.g., after previous conformity rulemakings, or new nonattainment designations) continues to be subject to these previous deadlines, but only in regard to the three provisions now required by the Clean Air Act. Two scenarios are described below.

1. Areas With Conformity SIPs That Address Only the Three Required Provisions

Once a state has an approved conformity SIP that addresses only the three sections that the Clean Air Act now requires, the state would need to revise its conformity SIP only if EPA revises one of these sections of the conformity rule, or the state chooses to revise one of these three provisions. Any future changes to the federal conformity rules beyond these three provisions would apply in any state that has only these three provisions in its approved conformity SIP, and these changes would not need to be adopted into the state's SIP.

2. Areas That Choose To Either Retain or Submit Additional Sections of the Conformity Rule

A state with a previously approved conformity SIP may decide to retain all or some of the federal rule in its SIP or a state without an approved conformity SIP could choose to submit for EPA approval all or some of the other sections of the federal rule. As noted above, one of the commenters expressly asked that EPA retain this option presumably so its state could avoid revising its conformity SIP. In such a case, the state should be aware that the conformity determinations in the state continue to be governed by the state's approved conformity SIP. Such a state would need to revise its conformity SIP when EPA makes changes to the federal rule in order to have those changes apply in the state. As stated earlier, EPA strongly encourages states to only include the three required provisions in a conformity SIP to take advantage of the streamlining flexibilities provided for by the Clean Air Act, as amended by SAFETEA–LU. EPA is updating our previous guidance on conformity SIPs. The guidance will be available on EPA's Web site at: *http://www.epa.gov/otaq/stateresources/transconf/policy.htm.* State and local agencies that need to prepare a conformity SIP should review this guidance and consult with the appropriate EPA Regional Office.

VIII. Transportation Control Measure Substitutions and Additions

SAFETEA–LU section 6011(d) amended the Clean Air Act by adding a new section 176(c)(8) that establishes specific criteria and procedures for replacing TCMs in an approved SIP with new TCMs and adding TCMs to an approved SIP.

EPA is revising the definition of a TCM in § 93.101 to clarify that TCMs as defined for conformity purposes also include any TCMs that are incorporated into the SIP through this new TCM substitution and addition process. However, EPA has determined that no additional revision of the transportation conformity regulations is necessary to implement the TCM substitution and addition provision. EPA did not receive any comments on this portion of the proposed rulemaking.

EPA concluded no implementing regulations are necessary for the reasons explained in the preamble to the May 2, 2007 proposed rule (72 FR 24485–6).

EPA is updating our previous guidance on TCM substitutions and additions. The guidance will be available on EPA's Web site at: *http://www.epa.gov/otaq/stateresources/transconf/policy.htm.* This guidance is consistent with the TCM substitution and additions portion (Section 5) of the EPA–DOT February 2006 Interim Guidance for implementing SAFETEA–LU. State and local agencies considering TCM substitutions or additions should review this guidance and consult with the appropriate EPA Regional Office.

Clean Air Act section 176(c)(8) requires that the EPA Administrator consult and concur on TCM substitutions and additions. However, as has been done with most other responsibilities related to the approval of SIP revisions, the Administrator has delegated this authority to the Regional Administrators. On September 29, 2006, the EPA Administrator signed a delegation of authority (Delegation of Authority 7–158: Transportation Control Measure Substitutions and Additions) providing EPA Regional Administrators with the authority to consult and concur on TCM substitutions and additions. The delegation of authority allows the Regional Administrators to further delegate these responsibilities to the regional air division directors, but no further.

IX. Categorical Hot-Spot Findings for Projects in Carbon Monoxide Nonattainment and Maintenance Areas

A. Background

Since the initial conformity rule was promulgated in 1993, a hot-spot analysis has been required for all project-level conformity determinations in CO nonattainment and maintenance areas (40 CFR 93.116 and 93.123(a)). A CO hot-spot analysis is an estimation of likely future localized pollutant concentrations and a comparison of those concentrations to the CO national ambient air quality standards (''standards'') (40 CFR 93.101). A hot-spot analysis assesses air quality impacts on a scale smaller than the entire nonattainment or maintenance area, such as a congested roadway intersection.

A CO hot-spot analysis must show that a non-exempt FHWA/FTA project does not cause any new violations of the CO standards or increase the frequency or severity of existing violations (40 CFR 93.116(a)). Until a CO attainment demonstration or maintenance plan is approved, non-exempt FHWA/FTA projects must also eliminate or reduce the severity and number of localized CO violations in the area substantially affected by the project (40 CFR 93.116(b). These existing requirements remain unchanged by today's final rule.

The type of CO hot-spot analysis varies depending on the type of project involved. Section 93.123(a)(1) requires quantitative hot-spot analyses for projects of most concern; section 93.123(a)(2) requires either a quantitative or qualitative hot-spot analysis for all other projects. These existing requirements also remain unchanged by today's final rule.

Hot-spot analyses are also required for certain projects in $PM_{2.5}$ and PM_{10} nonattainment and maintenance areas. The conformity rule allows DOT, in consultation with EPA, to make a ''categorical hot-spot finding'' in $PM_{2.5}$ and PM_{10} nonattainment and maintenance areas if there is appropriate modeling that shows that a particular category of highway or transit projects will meet applicable Clean Air Act conformity requirements without further analysis (40 CFR 93.123(b)(3)). If DOT makes such a finding, then no further hot-spot analysis to meet 40 CFR 93.116(a) is needed for any project that fits the category addressed by the finding. A project sponsor would simply

reference a categorical hot-spot finding in the project-level conformity determination to meet hot-spot analysis requirements. See EPA's March 10, 2006, final rule for further information (71 FR 12502–12506) on categorical hot-spot findings in $PM_{2.5}$ or PM_{10} areas.

B. Description of Final Rule

EPA is extending the categorical hot-spot finding provision that applies in PM areas to CO nonattainment and maintenance areas in today's final rule. This provision allows DOT, in consultation with EPA, to make categorical hot-spot findings for appropriate cases in CO nonattainment and maintenance areas if appropriate modeling shows that a type of highway or transit project does not cause or contribute to a new or worsened local air quality violation of the CO standards, as required under 40 CFR 93.116(a).[11] The regulatory text for this provision is found in § 93.123(a)(3).

Any DOT categorical hot-spot finding would have to be supported by a credible quantitative modeling demonstration showing that all potential projects in a category satisfy statutory requirements without further hot-spot analysis. Such modeling would need to be derived in consultation with EPA, and consistent with EPA's existing CO quantitative hot-spot modeling requirements, as described in 40 CFR 93.123(a), and approved emissions model requirements in 40 CFR 93.111. Modeling used to support a categorical hot-spot finding could consider the emissions produced from a category of projects based on potential project sizes, configurations, and levels of service. Modeling could also consider the emissions produced by a category of projects and the resulting impact on air quality under different circumstances.

The new provision does not affect the requirement for conformity determinations to be completed for all non-exempt projects in CO areas. The modeling on which a categorical finding is based would serve to fulfill the hot-spot analysis requirements for qualifying projects. The modeled scenarios used by DOT to make categorical hot-spot findings would be derived through consultation and participation by EPA.

Existing interagency consultation procedures for project-level conformity determinations also must be followed (40 CFR 93.105). Any project-level conformity determination that relies on a categorical hot-spot finding is also still subject to existing public involvement requirements, during which commenters could address all appropriate issues relating to the categorical findings used in the conformity determination. See D. of this section for further information on how EPA and DOT will implement this new provision.

C. Rationale and Response to Comments

EPA believes it is both appropriate and in compliance with the Clean Air Act for DOT to be able to make categorical hot-spot findings where modeling shows that such projects will not cause or contribute to new or worsened air quality violations. As long as modeling shows that all potential projects in a category meet the current conformity rule's hot-spot requirements (40 CFR 93.116(a))—either through an analysis of a category of projects or a hot-spot analysis for a single project—then certain Clean Air Act conformity requirements are met.

Clean Air Act section 176(c)(1)(B) is the statutory criterion that must be met by all projects in CO nonattainment and maintenance areas that are subject to transportation conformity. Section 176(c)(1)(B) states that federally-supported transportation projects must not ''cause or contribute to any new violation of any standard in any area; increase the frequency or severity of any existing violation of any standard in any area; or delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.''

EPA has not amended the existing CO hot-spot requirements in 40 CFR 93.116(a) that ensure areas meet Clean Air Act section 176(c)(1)(B) requirements. Today's provision for DOT to make categorical hot-spot findings simply allows future information to be taken into account in an expedited manner, so that further CO hot-spot analyses are not performed on an individual basis for projects where it is determined to be unnecessary to meet certain statutory requirements. Making hot-spot findings for certain projects on a category basis may reduce the resource burden for state, regional and local agencies, and provide greater certainty and stability to the transportation planning process, while still ensuring that all projects meet Clean Air Act requirements.

As noted above, CO categorical hot-spot findings under today's final rule could not be used to meet an additional hot-spot requirement for CO areas without approved attainment demonstrations or maintenance plans. Clean Air Act section 176(c)(3)(B)(ii) requires projects in these CO areas to also ''eliminate or reduce the severity and number of violations of the carbon monoxide standards in the area substantially affected by the project.'' This criterion is stipulated by 40 CFR 93.109(f)(1) and 93.116(b) for FHWA/FTA projects in these CO areas. EPA believes that this criterion is more appropriately met by evaluating the unique circumstances of an individual project, rather than based on a broader analysis of a category of projects. Since most CO areas already have approved attainment demonstrations or maintenance plans, there should be limited practical impact of this aspect of today's proposal.

Six commenters supported this provision. These commenters agreed that allowing DOT to make categorical hot-spot findings, in consultation with EPA, provides an opportunity to streamline hot-spot analyses in all CO areas for certain projects.

Additionally, commenters thought these categorical hot-spot findings would be consistent with the practice in many states already, and would reduce resource burdens while still ensuring that projects meet Clean Air Act requirements.

Some commenters thought that allowing DOT to make categorical hot-spot findings in CO areas would offer flexibility in satisfying the intent of the Clean Air Act. A commenter recognized that categorical hot-spot findings would have to be supported by credible quantitative modeling, and the scenarios modeled by DOT to make categorical findings would be derived through consultation and participation by EPA. EPA notes that the commenter's understanding is correct; see Section IX.D. below for further description of how modeling would be developed.

While six commenters supported allowing DOT to make categorical hot-spot findings for projects in CO areas, one commenter was concerned that the provision to allow U.S. DOT to make categorical hot-spot findings would be a requirement, rather than an option. This provision is an optional flexibility and not a requirement. Once DOT has made a finding for a category of projects, a sponsor of a project in that category can choose whether to rely on DOT's modeling, or do its own project-level analysis. In other words, a project sponsor can always decide to do its own project-level analysis, even for a project that belongs to a category that DOT has already analyzed.

This same commenter thought that this provision is unnecessary. The commenter thought that the similar

[11] As discussed further below, categorical hot-spot findings under the proposal could not be used to meet 40 CFR 93.116(b) requirements in the limited number of CO areas without approved attainment demonstrations or maintenance plans.

provision that applies in PM areas was created because of uncertainties regarding PM and because interagency consultation is needed to determine which projects are ''projects of air quality concern'' and what constitutes a ''significant number of diesel vehicles.'' This commenter also opined that the PM provision for categorical hot-spot analyses was developed because there are not acceptable modeling tools for $PM_{2.5}$ or PM_{10}. In contrast, the commenter explained that the parameters used to identify the need for a CO hot-spot analysis are clearly stated under § 93.123(a), and the technology for CO hot-spot analyses is accepted by EPA and FHWA.

EPA disagrees with the commenter and believes it is useful to have a provision for categorical hot-spot analyses in CO areas. This provision will be useful because all non-exempt projects in CO areas that belong to a category for which DOT has made a hot-spot finding will have a hot-spot analysis available for use in future conformity determinations. As noted above, project sponsors have discretion on whether they want to model each project even if DOT has already made a categorical hot-spot finding for projects of that type.

This same commenter also stated that interagency consultation on CO analyses simply adds a layer of costly and inefficient bureaucracy that is unnecessary to complete the analysis. EPA disagrees with the commenter on this point as well. No additional layer of bureaucracy will be added to project-level conformity determinations in CO areas as a result of this provision. EPA and DOT's coordination on modeling for categorical hot-spot findings will occur separately from any particular project's conformity determination.

D. General Implementation for Categorical Hot-Spot Findings

EPA and DOT will implement the CO categorical hot-spot finding provision similar to the implementation of $PM_{2.5}$ and PM_{10} categorical hot-spot findings, as described in the March 10, 2006, final rule. A project-level conformity determination continues to be required for all non-exempt FHWA/FTA projects in CO areas. Modeling used to support a categorical hot-spot finding would be based on appropriate motor vehicle emissions factor models, dispersion models, and EPA's existing requirements for quantitative CO hot-spot modeling as specified in 40 CFR 93.123(a)(1) (40 CFR part 51, Appendix W (Guideline on Air Quality Models)). Categorical hot-spot findings and modeling to support such findings would primarily involve EPA and DOT headquarters offices rather than field offices. Such coordination at the headquarters level will ensure national consistency in applying § 93.123(a)(3) and (b)(3).

In the March 2006 final rule (71 FR 12505), EPA and DOT described the general process for categorical hot-spot findings to be as follows:

- FHWA and/or FTA, as applicable, would develop modeling, analyses, and documentation to support the categorical hot-spot finding. This would be done with early and comprehensive consultation and participation with EPA.
- FHWA and/or FTA would provide EPA an opportunity to review and comment on the complete categorical hot-spot finding documentation. Any comments would need to be resolved in a manner acceptable to EPA prior to issuance of the categorical hot-spot finding. Consultation with EPA on issue resolution would be documented.
- FHWA and/or FTA would make the final categorical hot-spot finding in a memorandum or letter, which would be posted on EPA's and DOT's respective conformity Web sites.

Subsequently, transportation projects that meet the criteria set forth in the categorical hot-spot finding would reference that finding in their project-level conformity determination, which would be subject to interagency consultation and the public involvement requirements of the National Environmental Policy Act (NEPA) process and the conformity rule (40 CFR 93.105(e)). The existing consultation and public involvement processes would be used to consider the categorical hot-spot finding for a particular project.

X. Removal of Regulation 40 CFR 93.109(e)(2)(v)

A. Description of Final Rule

EPA is removing a provision of the transportation conformity rule that was vacated by the U.S. Court of Appeals for the District of Columbia Circuit (*Environmental Defense* v. *EPA, et al., D.C. Cir. No. 04–1291*) on October 20, 2006. This provision, 40 CFR 93.109(e)(2)(v), allowed 8-hour ozone areas to use the interim emissions test(s) for conformity instead of 1-hour ozone SIP budgets where the interim emissions test(s) was determined to be more appropriate to meet Clean Air Act requirements. The court vacated this provision and remanded it to EPA.

B. Rationale and Response to Comments

As discussed in the July 1, 2004, preamble (69 FR 40025), EPA anticipated that this provision would be used infrequently but that there would be some cases where using the interim emissions test(s) would be more appropriate to meet Clean Air Act requirements. Because of the court's decision on this provision, 8-hour ozone areas can no longer rely on § 93.109(e)(2)(v) to use an interim emissions test(s) instead of using 1-hour ozone budget(s). Areas must now use all relevant existing 1-hour ozone budgets in future conformity determinations until 8-hour ozone emissions budgets are found adequate or are approved for a given analysis year. EPA received one comment agreeing that the removal is consistent with the court ruling.

The court's decision has minimal impact since most 8-hour ozone areas are already either using their 1-hour or 8-hour ozone SIP budgets. EPA, in cooperation with DOT, has already provided assistance to the limited number of areas affected by the recent court decision.

XI. Miscellaneous Revisions

A. Minor Revision to § 93.102(b)(4)

EPA is making a minor revision to § 93.102(b)(4), which addresses the period of time that transportation conformity applies in maintenance areas. This is the period of time during which the requirements of the conformity rule apply in an area, and not the timeframe any one conformity determination examines, as discussed in Section VI., ''Timeframes for Conformity Determinations.''

Section 93.102(b)(4) had previously stated that conformity applied in ''maintenance areas for 20 years from the date EPA approves the area's request under section 107(d) of the CAA for redesignation to attainment, unless the applicable implementation plan specifies that the provisions of this subpart shall apply for more than 20 years.'' We are clarifying this section to ensure that conformity would apply in maintenance areas through the last year of their approved Clean Air Act section 175A(b) maintenance plan (i.e., the area's second 10-year maintenance plan), unless the applicable implementation plan specifies that conformity would continue to apply beyond the end of that maintenance plan. We received two comments that supported this clarification.

EPA is only clarifying § 93.102(b)(4) because the previous regulation may have been read to not account for the situation where a maintenance area submits a second maintenance plan that establishes a budget for a year more than 20 years beyond the date of EPA's

approval of the area's redesignation request and first maintenance plan.

For example, suppose an area's redesignation request and first maintenance plan are approved in 2006 and the maintenance plan establishes budgets for 2016. This area submits a second maintenance plan that extends through 2030 and establishes budgets for that year. Under the previous regulatory language, conformity applied in this area ''for 20 years from the date EPA approves'' the area's redesignation to maintenance, i.e., until 2026, despite the fact that the area would have budgets for 2030. This result would have been inconsistent with the Clean Air Act, which requires that transportation activities conform to the SIP. EPA's clarification that conformity applies through the last year of the approved second maintenance plan ensures that conformity applies throughout the time period covered by the SIP budgets. In this example, conformity would apply until 2030.

This revision will not change the implementation of conformity requirements in maintenance areas. The Clean Air Act requires that maintenance plans cover a period of 20 years from the year that EPA approves the area's redesignation request. With this change in the regulation, conformity would continue to apply in maintenance areas for at least 20 years beyond the date of EPA's redesignation of an area to maintenance. This clarification is consistent with EPA's intention as expressed in the preamble to the 1993 final transportation conformity rule, which stated, ''If the maintenance plan establishes emissions budgets for more than twenty years, the area would be required to show conformity to that maintenance plan for more than twenty years'' (58 FR 62206).

B. Technical Corrections to §§ 93.102(b)(2)(v) and 93.119(f)(10)

EPA is making corrections to §§ 93.102(b)(2)(v) and 93.119(f)(10) to change ''sulfur oxides'' to ''sulfur dioxide'' and ''SO_X'' to ''SO_2.'' In the May 6, 2005, transportation conformity final rule (70 FR 24279), EPA finalized requirements for $PM_{2.5}$ precursors. In that final rulemaking, we included ''sulfur oxides'' as one of the precursors and referred to sulfur oxides as SO_X. Since that rulemaking was finalized, EPA has finalized the $PM_{2.5}$ implementation rule (72 FR 20586) and indicated that sulfur dioxide (SO_2) would be regulated as a $PM_{2.5}$ precursor rather than all sulfur oxides. We are making these corrections to the transportation conformity rule in order to make it consistent with EPA's broader $PM_{2.5}$ implementation strategy. We received two comments that supported these corrections. This change will not impact current conformity practice.

C. Revisions to ''Table 2—Exempt Projects'' in § 93.126

EPA is making several minor clarifications to ''Table 2—Exempt Projects'' in § 93.126, under the category of ''Safety.'' Specifically, EPA is updating the following terms:

- ''Hazard elimination program'' is now ''Projects that correct, improve, or eliminate a hazardous location or feature;''
- ''Safety improvement program'' is now ''Highway Safety Improvement Program implementation;'' and
- ''Pavement marking demonstration'' is now ''Pavement marking.''

EPA is updating these terms to make them consistent with the terms in 23 U.S.C. 148, which has been amended by SAFETEA–LU section 1401. These revisions to Table 2 of the conformity regulation do not change the types of safety projects that are exempt from transportation conformity requirements. These revisions would only update the terminology to be consistent with the changes made by SAFETEA–LU to 23 U.S.C. 148. For more details see Section XI. C. ''Revisions to 'Table 2—Exempt Projects' in § 93.126'' in the May 2, 2007, notice of proposed rulemaking (72 FR 24488).

We received five comments on this portion of the proposal. Several of the commenters indicated that they support the changes to the list of exempt projects.

One commenter asked if EPA had considered revising the list of exempt projects in 40 CFR 93.126 to further clarify the types of projects that are exempt or non-exempt under ''Transportation Enhancement Activities.'' FHWA's guidance on activities that may be funded with Transportation Enhancement Activities is available on DOT's Web site at: *http://www.fhwa.dot.gov/environment/te/guidance.htm#eligible.* After reviewing this guidance, we have concluded that 40 CFR 93.126 is correct and additional changes are not required.

Some commenters recommended additions to the list of exempt projects in § 93.126. Given that we did not propose and request public comment on these additional changes to the list of exempt projects, these comments are outside the scope of today's rulemaking.

D. Definitions

Today's final rule revises the definitions of ''metropolitan planning organization (MPO)'' and ''transportation improvement program (TIP)'' to reflect the definitions in SAFETEA–LU sections 3005(a) and 6001(a). Pursuant to SAFETEA–LU, the term ''MPO'' now refers to the policy board for the organization that is designated under 23 U.S.C. 134(d) and 49 U.S.C. 5303(d). EPA is revising the definitions of these terms in § 93.101 to be consistent with the new statutory definitions. These changes have no practical impact in conformity implementation.

EPA received three comments supporting the revisions to the definitions of MPO and TIP because these changes make the transportation conformity regulation consistent with SAFETEA–LU.

E. Minor Clarifications for Hot-Spot Analyses

EPA is incorporating two minor clarifications to the conformity rule's hot-spot analysis provisions. These changes do not substantively change current requirements but should improve understanding and implementation of the conformity rule, in light of other rule changes. Three commenters supported these changes related to hot-spot analyses.

First, EPA is making minor changes to §§ 93.109(l)(2)(i) and 93.116(a) to ensure that CO, PM_{10}, and $PM_{2.5}$ hot-spot analyses will continue to consider a project's air quality impact over the entire timeframe of the transportation plan or long-range statewide transportation plan, as appropriate. Specifically, EPA's minor change to § 93.116(a) ensures that hot-spot analyses cover the timeframe of the transportation plan in metropolitan and donut nonattainment and maintenance areas. The addition to § 93.109(l)(2)(i) ensures that hot-spot analyses in isolated rural areas examine a project's air quality impact over the timeframe of the long-range statewide transportation plan.

As discussed in Section VI., today's final rule allows MPOs to elect to shorten the timeframe addressed by transportation plan and TIP conformity determinations, and allows state DOTs to elect to shorten the timeframe addressed by regional emissions analyses in isolated rural areas. The minor changes to §§ 93.116(a) and 93.109(l)(2)(i) ensure that project-level hot-spot analyses examine the appropriate time period, even if the timeframe of the long-range transportation plan or TIP conformity determination or regional emissions analysis is shortened. The Clean Air Act provisions that allow an election to shorten the timeframe covered by

conformity determinations apply only to transportation plan and TIP conformity determinations, or regional emissions analyses in isolated rural areas, and do not apply to hot-spot analyses.

Second, today's final rule incorporates a technical clarification to § 93.123(b)(1)(i) to address some confusion in the field since our March 10, 2006, final rule (71 FR 12468). Section 93.123(b)(1)(i) requires $PM_{2.5}$ or PM_{10} hot-spot analyses to be completed for ''New highway projects that have a significant number of diesel vehicles, and expanded projects that have a significant increase in the number of diesel vehicles.'' The prior wording was ''New or expanded highway projects that have a significant number of or significant increase in diesel vehicles.''

Since the March 2006 final rule was promulgated, EPA and DOT have received several questions regarding what types of new and expanded highway projects are covered by § 93.123(b)(1)(i). For example, some state and local transportation agencies have asked how the current rule's reference to a ''significant increase in diesel vehicles'' applies to new highway projects. Although EPA and DOT have answered these and other questions,[12] clarifying this provision of the conformity rule will assist planners as they implement the rule in the future. The technical clarification in today's final rule does not change the type of new or expanded highway projects that would require $PM_{2.5}$ or PM_{10} hot-spot analyses for transportation conformity purposes; we are simply clarifying the provision through a grammatical change.

F. Minor Revision for Terms Used To Describe Transportation Plan Revisions

EPA is finalizing a minor revision to how §§ 93.104(b)(2) and 93.105(c)(1)(v) describe transportation plan changes that require conformity determinations, but are not comprehensive transportation plan updates. EPA is changing references for transportation plan ''revision(s)'' to be transportation plan ''amendment(s),'' to be consistent with the revised planning definitions in DOT's February 14, 2007, final transportation planning regulations (72 FR 7224). Today's changes provide consistency between how mid-cycle transportation plan and TIP changes are currently described in the conformity rule. The revision does not change the substantive requirements for when a conformity determination is required for transportation plan changes. In addition, the minor wording change to § 93.105(c)(1)(v) does not necessitate a conformity SIP revision. Three commenters supported the changes.

G. Minor Revision to Reference for Public Consultation Provision

EPA is updating a reference in § 93.105(e) of the conformity rule to be consistent with DOT's transportation planning regulations. Section 93.105(e) describes the procedures for consulting with the general public on conformity determinations. This provision now refers to 23 CFR 450.316(a) of DOT's transportation planning regulations, which describes how public involvement occurs during the development of transportation plans and TIPs. In its February 14, 2007, final rule (72 FR 7224), DOT reorganized 23 CFR 450.316 to reflect the new SAFETEA–LU statute. DOT moved the public consultation procedures that EPA has historically relied upon in the conformity rule from 23 CFR 450.316(b) to 23 CFR 450.316(a). Today's final rule reflects this change in DOT's transportation planning regulations. Three commenters supported this change.

This revision does not change the substantive requirements for the public consultation requirements for conformity determinations. In addition, today's change does not cause states to revise their conformity SIPs, since the revision involves an administrative change to one reference in DOT's regulations. EPA has not required conformity SIP revisions for similar reference changes in the past; the public participation requirements in existing approved conformity SIPs can be implemented as intended even if they do not reflect the most current citation in DOT's regulations.

XII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a ''significant regulatory action'' under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

B. Paperwork Reduction Act

Transportation conformity determinations are required under Clean Air Act section 176(c) (42 U.S.C. 7506(c)) to ensure that federally supported highway and transit project activities are consistent with (''conform to'') the purpose of the SIP. Conformity to the purpose of the SIP means that transportation activities will not cause or contribute to new air quality violations, worsen existing violations, or delay timely attainment of the relevant air quality standards. Transportation conformity applies under EPA's conformity regulations at 40 CFR parts 51.390 and 93 to areas that are designated nonattainment and those redesignated to attainment after 1990 (''maintenance areas'' with SIPs developed under Clean Air Act section 175A) for transportation-source criteria pollutants. The Clean Air Act gives EPA the statutory authority to establish the criteria and procedures for determining whether transportation activities conform to the SIP.

This action does not impose any new information collection burden or any new information collection requirements. The Office of Management and Budget has previously approved the information collection requirements under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The information collection requirements of EPA's existing transportation conformity rule and the revisions in today's action are addressed by two information collection requests (ICRs). Requirements for carbon monoxide, PM_{10}, nitrogen dioxide, and 1-hour ozone nonattainment and maintenance areas are covered under the DOT ICR entitled, ''Metropolitan and Statewide Transportation Planning,'' with the OMB control number of 2132–0529. Requirements related to $PM_{2.5}$ and 8-hour ozone nonattainment and maintenance areas are covered by the EPA ICR entitled, ''Transportation Conformity Determinations for Federally Funded and Approved Transportation Plans, Programs and Projects Under the New 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' with OMB control number 2060–0561, EPA ICR number 2130.02. EPA is currently revising its ICR to cover all transportation conformity burden (EPA ICR No. 2130.03, OMB Control No. 2060–0561), and this ICR will incorporate the efficiencies in today's final rule.

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, verifying, processing, maintaining, disclosing, and providing information; adjust the existing ways to

[12] For additional information about $PM_{2.5}$ and PM_{10} hot-spot analysis requirements, including regulations, guidance, and Q and As, see EPA's and DOT's Web sites at: *http://www.epa.gov/otaq/stateresources/transconf/index.htm* and *http://www.fhwa.dot.gov/environment/conform.htm.*

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 collect information, and a person is not required to respond to an agency's request for information unless it has a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an Agency to prepare a regulatory flexibility analysis of rules 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 not-for-profit organizations and small government jurisdictions.

For purposes of assessing the impacts of today's 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 that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's 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 regulation directly affects federal agencies and metropolitan planning organizations that, by definition, are designated under federal transportation laws only for metropolitan areas with a population of at least 50,000. These organizations do not constitute small entities within the meaning of the Regulatory Flexibility Act.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''federal mandates'' that may result in expenditures 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 itself does not contain a federal mandate that may result in expenditures of $100 million or more by state, local, and tribal governments, in the aggregate, or the private sector in any one year. The primary purpose of this rule is to amend the conformity rule to be consistent with Clean Air Act section 176(c) as amended by SAFETEA–LU. The Clean Air Act amendments made by SAFETEA–LU were intended to reduce the burden of demonstrating conformity in designated nonattainment and maintenance areas subject to conformity requirements. Thus, although this rule explains how to implement these Clean Air Act amendments, it merely implements already established law that imposes conformity requirements and does not itself impose requirements that may result in expenditures of $100 million or more in any year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA and EPA has not prepared a statement with respect to budgetary impacts.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. This rule will not significantly or uniquely impact small governments because it directly affects federal agencies and metropolitan planning organizations that, by definition, are designated under federal transportation laws only for metropolitan areas with a population of at least 50,000. Additionally, this rule explains how to implement Clean Air Act requirements, as such it merely implements already established law that imposes conformity requirements and does not itself impose requirements.

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 rule does not have federalism implications. It will not have substantial direct effects on states, on the relationship between the national government and states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The Clean Air Act requires conformity to apply in certain nonattainment and maintenance areas as a matter of law, and this rule merely establishes and revises procedures for transportation planning entities in subject areas to follow in meeting their existing statutory obligations. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175: ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 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.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the federal

government and the Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes.''

Today's amendments to the conformity rule do not significantly or uniquely affect the communities of Indian tribal governments, as the Clean Air Act requires transportation conformity to apply in any area that is designated nonattainment or maintenance by EPA. This rule amends the conformity rule to be consistent with Clean Air Act section 176(c) as amended by SAFETEA–LU. The Clean Air Act amendments made by SAFETEA–LU affect nonattainment and maintenance areas subject to conformity requirements. This rule does not have tribal implcations, as specified in Executive Order 13175. Accordingly, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use

This rule is not subject to Executive Order 13211, ''Action Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355; May 22, 2001) because it will not have a significant adverse effect on the supply, distribution, or use of energy. Further, we have determined that this rule is not likely to have any significant adverse effects on energy supply.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., material specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

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

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of 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). This rule will be effective February 25, 2008.

List of Subjects in 40 CFR Parts 51 and 93

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Highways and roads, Intergovernmental relations, Mass transportation, Nitrogen Dioxide, Ozone, Particulate matter, Transportation, Volatile organic compounds.

Dated: January 9, 2008.

Stephen L. Johnson,

Administrator.

■ For the reasons set out in the preamble, 40 CFR parts 51 and 93 are amended as follows:

PART 51—[AMENDED]

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

Authority: 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

Subpart T—[Amended]

■ 2. An authority citation for subpart T of part 51 is added to read as follows:

Authority: 42 U.S.C. 7401–7671q.

■ 3. Section 51.390 is revised to read as follows:

§ 51.390 Implementation plan revision.

(a) *Purpose and applicability.* The federal conformity rules under part 93, subpart A, of this chapter, in addition to any existing applicable state requirements, establish the conformity criteria and procedures necessary to meet the requirements of Clean Air Act section 176(c) until such time as EPA approves the conformity implementation plan revision required by this subpart. A state with an area subject to this subpart and part 93, subpart A, of this chapter must submit to EPA a revision to its implementation plan which contains criteria and procedures for DOT, MPOs and other state or local agencies to assess the conformity of transportation plans, programs, and projects, consistent with this subpart and part 93, subpart A, of this chapter. The federal conformity regulations contained in part 93, subpart A, of this chapter would continue to apply for the portion of the requirements that the state did not include in its conformity implementation plan and the portion, if any, of the state's conformity provisions that is not approved by EPA. In addition, any previously applicable implementation plan conformity requirements remain enforceable until the state submits a revision to its applicable implementation plan to specifically remove them and that revision is approved by EPA.

(b) *Conformity implementation plan content.* To satisfy the requirements of Clean Air Act section 176(c)(4)(E), the implementation plan revision required by this section must include the following three requirements of part 93, subpart A, of this chapter: §§ 93.105, 93.122(a)(4)(ii), and 93.125(c). A state may elect to include any other provisions of part 93, subpart A. If the provisions of the following sections of part 93, subpart A, of this chapter are included, such provisions must be included in verbatim form, except insofar as needed to clarify or to give effect to a stated intent in the revision to establish criteria and procedures

more stringent than the requirements stated in this chapter: §§ 93.101, 93.102, 93.103, 93.104, 93.106, 93.109, 93.110, 93.111, 93.112, 93.113, 93.114, 93.115, 93.116, 93.117, 93.118, 93.119, 93.120, 93.121, 93.126, and 93.127. A state's conformity provisions may contain criteria and procedures more stringent than the requirements described in this subpart and part 93, subpart A, of this chapter only if the state's conformity provisions apply equally to non-federal as well as federal entities.

(c) *Timing and approval.* A state must submit this revision to EPA by November 25, 1994 or within 12 months of an area's redesignation from attainment to nonattainment, if the state has not previously submitted such a revision. The state must also revise its conformity implementation plan within 12 months of the date of publication of any final amendments to §§ 93.105, 93.122(a)(4)(ii), and 93.125(c), as appropriate. Any other portions of part 93, subpart A, of this chapter that the state has included in its conformity implementation plan and EPA has approved must be revised in the state's implementation plan and submitted to EPA within 12 months of the date of publication of any final amendments to such sections. EPA will provide DOT with a 30-day comment period before taking action to approve or disapprove the submission. In order for EPA to approve the implementation plan revision submitted to EPA under this subpart, the plan revision must address and give full legal effect to the following three requirements of part 93, subpart A: §§ 93.105, 93.122(a)(4)(ii), and 93.125(c). Any other provisions that are incorporated into the conformity implementation plan must also be done in a manner that gives them full legal effect. Following EPA approval of the state conformity provisions (or a portion thereof) in a revision to the state's conformity implementation plan, conformity determinations will be governed by the approved (or approved portion of the) state criteria and procedures as well as any applicable portions of the federal conformity rules that are not addressed by the approved conformity SIP.

PART 93—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

■ 5. Section 93.101 is amended by:
■ a. Revising the definitions for ''Metropolitan planning organization (MPO)'' and ''Transportation improvement program (TIP)''; and
■ b. Revising the first sentence of the definition for ''Transportation control measure (TCM)''.

The revisions read as follows:

§ 93.101 Definitions.

* * * * *

Metropolitan planning organization (MPO) means the policy board of an organization created as a result of the designation process in 23 U.S.C. 134(d).

* * * * *

Transportation control measure (TCM) is any measure that is specifically identified and committed to in the applicable implementation plan, including a substitute or additional TCM that is incorporated into the applicable SIP through the process established in CAA section 176(c)(8), that is either one of the types listed in CAA section 108, or any other measure for the purpose of reducing emissions or concentrations of air pollutants from transportation sources by reducing vehicle use or changing traffic flow or congestion conditions. * * *

Transportation improvement program (TIP) means a transportation improvement program developed by a metropolitan planning organization under 23 U.S.C. 134(j).

* * * * *

§ 93.102 [Amended]

■ 6. Section 93.102 is amended as follows:
■ a. In paragraph (b)(2)(v), by removing ''sulfur oxides (SO_X)'' and adding in its place ''sulfur dioxide (SO_2)''; and
■ b. In paragraph (b)(4), removing ''for 20 years from the date EPA approves the area's request under section 107(d) of the CAA for redesignation to attainment'' and adding in its place ''through the last year of a maintenance area's approved CAA section 175A(b) maintenance plan''.

■ 7. Section 93.104 is amended as follows:
■ a. By revising paragraphs (b)(2), (b)(3), and (c)(3);
■ b. By revising paragraph (e) introductory text; and
■ c. By adding paragraph (f).

§ 93.104 Frequency of conformity determinations.

* * * * *

(b) * * *

(2) All transportation plan amendments must be found to conform before the transportation plan amendments are approved by the MPO or accepted by DOT, unless the amendment merely adds or deletes exempt projects listed in § 93.126 or § 93.127. The conformity determination must be based on the transportation plan and the amendment taken as a whole.

(3) The MPO and DOT must determine the conformity of the transportation plan (including a new regional emissions analysis) no less frequently than every four years. If more than four years elapse after DOT's conformity determination without the MPO and DOT determining conformity of the transportation plan, a 12-month grace period will be implemented as described in paragraph (f) of this section. At the end of this 12-month grace period, the existing conformity determination will lapse.

(c) * * *

(3) The MPO and DOT must determine the conformity of the TIP (including a new regional emissions analysis) no less frequently than every four years. If more than four years elapse after DOT's conformity determination without the MPO and DOT determining conformity of the TIP, a 12-month grace period will be implemented as described in paragraph (f) of this section. At the end of this 12-month grace period, the existing conformity determination will lapse.

(e) *Triggers for transportation plan and TIP conformity determinations.* Conformity of existing transportation plans and TIPs must be redetermined within two years of the following, or after a 12-month grace period (as described in paragraph (f) of this section) the existing conformity determination will lapse, and no new project-level conformity determinations may be made until conformity of the transportation plan and TIP has been determined by the MPO and DOT:

* * * * *

(f) *Lapse grace period.* During the 12-month grace period referenced in paragraphs (b)(3), (c)(3), and (e) of this section, a project may be found to conform according to the requirements of this part if:

(1) The project is included in the currently conforming transportation plan and TIP (or regional emissions analysis); or

(2) the project is included in the most recent conforming transportation plan and TIP (or regional emissions analysis).

§ 93.105 [Amended]

■ 8. Section 93.105 is amended by removing ''revisions or'' in paragraph (c)(1)(v), and by removing the reference ''23 CFR 450.316(b)'' in paragraph (e) and adding in its place ''23 CFR 450.316(a)''.

■ 9. Section 93.106 is amended as follows:
■ a. By revising the section heading;

■ b. By revising paragraphs (a)(1)(iii) and (iv);
■ c. By adding new paragraph (a)(v);
■ d. By redesignating paragraph (d) as paragraph (e); and
■ e. By adding new paragraph (d).

§ 93.106 Content of transportation plans and timeframe of conformity determinations.

(a) * * *

(1) * * *

(iii) The attainment year must be a horizon year if it is in the timeframe of the transportation plan and conformity determination;

(iv) The last year of the transportation plan's forecast period must be a horizon year; and

(v) If the timeframe of the conformity determination has been shortened under paragraph (d) of this section, the last year of the timeframe of the conformity determination must be a horizon year.

* * * * *

(d) *Timeframe of conformity determination.*

(1) Unless an election is made under paragraph (d)(2) or (d)(3) of this section, the timeframe of the conformity determination must be through the last year of the transportation plan's forecast period.

(2) For areas that do not have an adequate or approved CAA section 175A(b) maintenance plan, the MPO may elect to shorten the timeframe of the transportation plan and TIP conformity determination, after consultation with state and local air quality agencies, solicitation of public comments, and consideration of such comments.

(i) The shortened timeframe of the conformity determination must extend at least to the latest of the following years:

(A) The tenth year of the transportation plan;

(B) The latest year for which an adequate or approved motor vehicle emissions budget(s) is established in the submitted or applicable implementation plan; or

(C) The year after the completion date of a regionally significant project if the project is included in the TIP or the project requires approval before the subsequent conformity determination.

(ii) The conformity determination must be accompanied by a regional emissions analysis (for informational purposes only) for the last year of the transportation plan and for any year shown to exceed motor vehicle emissions budgets in a prior regional emissions analysis, if such a year extends beyond the timeframe of the conformity determination.

(3) For areas that have an adequate or approved CAA section 175A(b) maintenance plan, the MPO may elect to shorten the timeframe of the conformity determination to extend through the last year of such maintenance plan after consultation with state and local air quality agencies, solicitation of public comments, and consideration of such comments.

(4) Any election made by an MPO under paragraphs (d)(2) or (d)(3) of this section shall continue in effect until the MPO elects otherwise, after consultation with state and local air quality agencies, solicitation of public comments, and consideration of such comments.

* * * * *

§ 93.109 [Amended]

■ 10. Section 93.109 is amended as follows:
■ a. By revising the introductory text of paragraph (e)(2);
■ b. By removing paragraph (e)(2)(v); and
■ c. By revising paragraph (l)(2)(i):

§ 93.109 Criteria and procedures for determining conformity of transportation plans, programs, and projects: General.

* * * * *

(e) * * *

(2) Prior to paragraph (e)(1) of this section applying, the following test(s) must be satisfied:

* * * * *

(1) * * *

(2) * * *

(i) When the requirements of §§ 93.106(d), 93.116, 93.118, and 93.119 apply to isolated rural nonattainment and maintenance areas, references to ''transportation plan'' or ''TIP'' should be taken to mean those projects in the statewide transportation plan or statewide TIP which are in the rural nonattainment or maintenance area. When the requirements of § 93.106(d) apply to isolated rural nonattainment and maintenance areas, references to ''MPO'' should be taken to mean the state department of transportation.

■ 11. Section 93.114 is amended by revising the introductory text to read as follows:

§ 93.114 Criteria and procedures: Currently conforming transportation plan and TIP.

There must be a currently conforming transportation plan and currently conforming TIP at the time of project approval, or a project must meet the requirements in § 93.104(f) during the 12-month lapse grace period.

* * * * *

■ 12. Section 93.115 is amended by revising the section heading and adding a new paragraph (e) to read as follows:

§ 93.115 Criteria and procedures: Projects from a transportation plan and TIP.

* * * * *

(e) Notwithstanding the requirements of paragraphs (a), (b), and (c) of this section, a project must meet the requirements of § 93.104(f) during the 12-month lapse grace period.

■ 13. Section 93.116(a) is amended in the fourth sentence by removing ''(or regional emissions analysis)''.

■ 14. Section 93.118 is amended as follows:
■ a. By revising paragraph (b) introductory text;
■ b. By revising the first sentence in paragraph (d)(2); and
■ c. By adding new paragraph (d)(3).

§ 93.118 Criteria and procedures: Motor vehicle emissions budget.

* * * * *

(b) Consistency with the motor vehicle emissions budget(s) must be demonstrated for each year for which the applicable (and/or submitted) implementation plan specifically establishes motor vehicle emissions budget(s), for the attainment year (if it is within the timeframe of the transportation plan and conformity determination), for the last year of the timeframe of the conformity determination (as described under § 93.106(d)), and for any intermediate years within the timeframe of the conformity determination as necessary so that the years for which consistency is demonstrated are no more than ten years apart, as follows:

* * * * *

(d) * * *

(2) The regional emissions analysis may be performed for any years in the timeframe of the conformity determination (as described under § 93.106(d)) provided they are not more than ten years apart and provided the analysis is performed for the attainment year (if it is in the timeframe of the transportation plan and conformity determination) and the last year of the timeframe of the conformity determination. * * *

(3) When the timeframe of the conformity determination is shortened under § 93.106(d)(2), the conformity determination must be accompanied by a regional emissions analysis (for informational purposes only) for the last year of the transportation plan, and for any year shown to exceed motor vehicle emissions budgets in a prior regional emissions analysis (if such a year

extends beyond the timeframe of the conformity determination).

* * * * *

■ 15. Section 93.119 is amended as follows:

■ a. In paragraph (f)(10), by removing ''SO_X'' and adding ''SO_2'' in its place;

■ b. By revising the last sentence in paragraph (g)(1); and

■ c. By adding new paragraph (g)(3).

§ 93.119 Criteria and procedures: Interim emissions in areas without motor vehicle emissions budgets.

* * * * *

(g) * * *

(1) * * * The last year of the timeframe of the conformity determination (as described under § 93.106(d)) must also be an analysis year.

* * * * *

(3) When the timeframe of the conformity determination is shortened under § 93.106(d)(2), the conformity determination must be accompanied by a regional emissions analysis (for informational purposes only) for the last year of the transportation plan.

* * * * *

■ 16. Section 93.120 is amended by revising paragraph (a)(2) to read as follows:

§ 93.120 Consequences of control strategy implementation plan failures.

(a) * * *

(2) If EPA disapproves a submitted control strategy implementation plan revision without making a protective finding, only projects in the first four years of the currently conforming transportation plan and TIP or that meet the requirements of § 93.104(f) during the 12-month lapse grace period may be found to conform. This means that beginning on the effective date of a disapproval without a protective finding, no transportation plan, TIP, or project not in the first four years of the currently conforming transportation plan and TIP or that meets the requirements of § 93.104(f) during the 12-month lapse grace period may be found to conform until another control strategy implementation plan revision fulfilling the same CAA requirements is submitted, EPA finds its motor vehicle emissions budget(s) adequate pursuant to § 93.118 or approves the submission, and conformity to the implementation plan revision is determined.

* * * * *

■ 17. Section 93.121 is amended by revising paragraphs (a)(1) and (2) to read as follows:

§ 93.121 Requirements for adoption or approval of projects by other recipients of funds designated under title 23 U.S.C. or the Federal Transit Laws.

(a) * * *

(1) The project comes from the currently conforming transportation plan and TIP (or meets the requirements of § 93.104(f) during the 12-month lapse grace period), and the project's design concept and scope have not changed significantly from those that were included in the regional emissions analysis for that transportation plan and TIP;

(2) The project is included in the regional emissions analysis for the currently conforming transportation plan and TIP conformity determination (or meets the requirements of § 93.104(f) during the 12-month lapse grace period), even if the project is not strictly included in the transportation plan or TIP for the purpose of MPO project selection or endorsement, and the project's design concept and scope have not changed significantly from those that were included in the regional emissions analysis; or

* * * * *

■ 18. Section 93.123 is amended by adding paragraph (a)(3) and revising paragraph (b)(1)(i) to read as follows:

§ 93.123 Procedures for determining localized CO, PM10, and PM2.5 concentrations (hot-spot analysis).

(a) * * *

(3) DOT, in consultation with EPA, may also choose to make a categorical hot-spot finding that (93.116(a) is met without further hot-spot analysis for any project described in paragraphs (a)(1) and (a)(2) of this section based on appropriate modeling. DOT, in consultation with EPA, may also consider the current air quality circumstances of a given CO nonattainment or maintenance area in categorical hot-spot findings for applicable FHWA or FTA projects.

(b) * * *

(1) * * *

(i) New highway projects that have a significant number of diesel vehicles, and expanded highway projects that have a significant increase in the number of diesel vehicles;

* * * * *

§ 93.126 [Amended]

■ 19. Table 2 in § 93.126 is amended under the heading ''Safety'' as follows:

■ a. By removing the entry ''Hazard elimination program'' and adding in its place ''Projects that correct, improve, or eliminate a hazardous location or feature'';

■ b. By removing the entry ''Safety improvement program'' and adding in its place ''Highway Safety Improvement Program implementation''; and

■ c. By removing the entry ''Pavement marking demonstration'' and adding in its place ''Pavement marking''.

[FR Doc. E8–597 Filed 1–23–08; 8:45 am]

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Federal Register

Thursday,
January 24, 2008

Part V

The President

Executive Order 13455—Establishing the President's Advisory Council on Financial Literacy

Federal Register
Vol. 73, No. 16
Thursday, January 24, 2008

Presidential Documents

Title 3—

The President

Executive Order 13455 of January 22, 2008

Establishing the President's Advisory Council on Financial Literacy

By the authority vested in me as President by the Constitution and the laws of the United States of America and to promote and enhance financial literacy among the American people, it is hereby ordered as follows:

Section 1. *Policy*. To help keep America competitive and assist the American people in understanding and addressing financial matters, it is the policy of the Federal Government to encourage financial literacy among the American people.

Sec. 2. *Establishment of the Council*. There is established within the Department of the Treasury the President's Advisory Council on Financial Literacy (Council).

Sec. 3. *Membership and Operation of the Council*. (a) The Council shall consist of 19 members appointed by the President from among individuals not employed by the Federal Government, consistent with subsection (b) of this section.

(b) In selecting individuals for appointment to the Council, appropriate consideration should be given to selection of individuals with backgrounds as providers of, consumers of, promoters of access to, and educators with respect to financial education and financial services. Each individual member of the Council will serve as a representative of his or her industry, trade group, public interest group, or other organization or group. The composition of the Council will reflect the views of diverse stakeholders.

(c) The President shall designate a Chair and a Vice Chair from among the members of the Council.

(d) Subject to the direction of the Secretary of the Treasury (Secretary), the Chair shall convene and preside at meetings of the Council, determine its agenda, direct its work, and, as appropriate to deal with particular subject matters, establish and direct the work of subgroups of the Council that shall consist exclusively of members of the Council.

(e) The Vice Chair shall perform:

(i) the duties of the Chair when the position of Chair is vacant; and

(ii) such other functions as the Chair may from time to time assign.

Sec. 4. *Functions of the Council*. To assist in implementing the policy set forth in section 1 of this order, the Council shall:

(a) obtain information and advice concerning financial literacy as appropriate in the course of its work from:

(i) officers and employees of executive departments and agencies (including members of the Financial Literacy and Education Commission), unless otherwise directed by the head of the department or agency;

(ii) State, local, territorial, and tribal officials;

(iii) providers of, consumers of, promoters of access to, and educators with respect to financial services;

(iv) experts on matters relating to the policy set forth in section 1; and

(v) such other individuals as the Secretary may direct;

(b) advise the President and the Secretary consistent with this order on means to implement effectively the policy set forth in section 1, including by providing advice on means to:

(i) improve financial education efforts for youth in school and for adults in the workplace;

(ii) promote effective access to financial services, especially for those without access to such services;

(iii) establish effective measures of national financial literacy;

(iv) conduct research on financial knowledge, including the collection of data on the extent of financial knowledge of individuals; and

(v) strengthen and coordinate public and private sector financial education programs; and

(c) periodically report to the President, through the Secretary, on:

(i) the status of financial literacy in the United States;

(ii) progress made in implementing the policy set forth in section 1 of this order; and

(iii) recommendations on means to further implement the policy set forth in section 1 of this order, including with respect to the matters set forth in subsection (b)(i) through (v) of this section.

Sec. 5. *Administration of the Council.* (a) To the extent permitted by law, the Department of the Treasury shall provide funding and administrative support for the Council, as determined by the Secretary, to implement this order.

(b) The heads of executive departments and agencies shall provide, as appropriate and to the extent permitted by law, such assistance and information to the Council as the Secretary may request to implement this order.

(c) Members of the Council:

(i) shall serve without any compensation for their work on the Council; and

(ii) while engaged in the work of the Council, may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the Government (5 U.S.C. 5701–5707), consistent with the availability of funds.

(d) The Secretary shall designate an officer or employee of the United States within the Department of the Treasury to serve as an Executive Director to supervise the administrative support for the Council.

Sec. 6. *Termination of the Council.* Unless extended by the President, the Council shall terminate 2 years from the date of this order.

Sec. 7. *General Provisions.* (a) Insofar as the Federal Advisory Committee Act, as amended (5 U.S.C. App.) (Act), may apply to the Council, any functions of the President under the Act, except for those in section 6 of the Act, shall be performed by the Secretary in accordance with the guidelines issued by the Administrator of General Services.

(b) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to a department or agency or the head thereof; or

(ii) functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals.

(c) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

THE WHITE HOUSE,
January 22, 2008.

[FR Doc. 08–325
Filed 1–23–08; 8:57 am]
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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

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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)

Last List January 7, 2008

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