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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[Docket Nos. AMS–FV–07–0135; FV08–985–2 FR]

Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Salable Quantities and Allotment Percentages for the 2008–2009 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule establishes the quantity of spearmint oil produced in the Far West, by class that handlers may purchase from, or handle for, producers during the 2008–2009 marketing year, which begins on June 1, 2008. This rule establishes salable quantities and allotment percentages for Class 1 (Scotch) spearmint oil of 993,067 pounds and 50 percent, respectively, and for Class 3 (Native) spearmint oil of 1,184,748 pounds and 53 percent, respectively. The Spearmint Oil Administrative Committee (Committee), the agency responsible for local administration of the marketing order for spearmint oil produced in the Far West, recommended these limitations for the purpose of avoiding extreme fluctuations in supplies and prices to help maintain stability in the spearmint oil market.

DATES: *Effective Date:* April 22, 2008.

FOR FURTHER INFORMATION CONTACT: Susan M. Coleman, Marketing Specialist or Gary D. Olson, Regional Manager, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (503) 326–2724; Fax: (503) 326–7440; or E-mail: *Sue.Coleman@usda.gov or GaryD.Olson@usda.gov*.

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

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 985 (7 CFR part 985), as amended, regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of Nevada and Utah), hereinafter referred to as the ''order.'' This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, salable quantities and allotment percentages may be established for classes of spearmint oil produced in the Far West. This final rule establishes the quantity of spearmint oil produced in the Far West, by class, which may be purchased from or handled for producers by handlers during the 2008–2009 marketing year, which begins on June 1, 2008. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

Pursuant to authority in §§ 985.50, 985.51, and 985.52 of the order, the Committee, with seven of its eight members present, met on October 17, 2007, and recommended salable quantities and allotment percentages for both classes of oil for the 2008–2009 marketing year. The Committee unanimously recommended the establishment of a salable quantity and allotment percentage for Scotch spearmint oil of 993,067 pounds and 50 percent, respectively. For Native spearmint oil, the Committee unanimously recommended the establishment of a salable quantity and allotment percentage of 1,184,748 pounds and 53 percent, respectively.

This final rule limits the amount of spearmint oil that handlers may purchase from, or handle for, producers during the 2008–2009 marketing year, which begins on June 1, 2008. Salable quantities and allotment percentages have been placed into effect each season since the order's inception in 1980.

The U.S. production of Scotch spearmint oil is concentrated in the Far West, which includes Washington, Idaho, and Oregon and a portion of Nevada and Utah. Scotch spearmint oil is also produced in the Midwest states of Indiana, Michigan, and Wisconsin, as well as in the States of Montana, South Dakota, North Dakota, and Minnesota. The production area covered by the marketing order currently accounts for approximately 62 percent of the annual U.S. sales of Scotch spearmint oil.

When the order became effective in 1980, the Far West had 72 percent of the world's sales of Scotch spearmint oil. While the Far West is still the leading producer of Scotch spearmint oil, its share of world sales is now estimated to be about 46 percent. This loss in world sales for the Far West region is directly attributed to the increase in global production. Other factors that have played a significant role include the overall quality of the imported oil and technological advances that allow for more blending of lower quality oils. Such factors have provided the Committee with challenges in accurately predicting trade demand for Scotch oil. This, in turn, has made it difficult to balance available supplies with demand and to achieve the

Committee's overall goal of stabilizing producer and market prices.

The marketing order has continued to contribute to price and general market stabilization for Far West producers. The Committee, as well as spearmint oil producers and handlers attending the October 17, 2007, meeting, estimated that the 2007–2008 producer price for Scotch oil would be $14.00 to $15.00 per pound. However, there is very little forward contracting being done at the present time and producers are wary of doing so because of significant increases in their cost of production. This producer price is approaching the cost of production for most producers as indicated in a study from the Washington State University Cooperative Extension Service (WSU), which estimates production costs to be between $13.50 and $15.00 per pound. However, this study was completed in 2001 and fuel costs alone have doubled in price. The rises in fuel costs have also increased other petroleum based products, such as tires, fertilizer, and chemicals, which also increase production costs.

This low level of producer returns has caused an overall reduction in acreage. When the order became effective in 1980, the Far West region had 9,702 acres of Scotch spearmint. The Committee reported that the 2007–2008 acreage of Scotch was 6,528 acres, which resulted in 810,675 pounds of Scotch oil.

The Committee recommended the 2008–2009 Scotch spearmint oil salable quantity (993,067 pounds) and allotment percentage (50 percent) utilizing sales estimates for 2008–2009 Scotch spearmint oil as provided by several of the industry's handlers, as well as historical and current Scotch spearmint oil sales levels. The Committee is estimating that about 920,000 pounds of Scotch spearmint oil, on average, may be sold during the 2008–2009 marketing year. When considered in conjunction with the estimated zero carry-in of oil on June 1, 2008, the recommended salable quantity of 993,067 pounds results in a total available supply of Scotch spearmint oil next year of 993,067 pounds.

The recommendation for the 2008–2009 Scotch spearmint oil volume regulation is consistent with the Committee's stated intent of keeping adequate supplies available at all times, while attempting to stabilize prices at a level adequate to sustain the producers. Furthermore, the recommendation takes into consideration the industry's desire to compete with less expensive oil produced outside the regulated area.

Although Native spearmint oil producers are facing market conditions similar to those affecting the Scotch spearmint oil market, the market share is quite different. Over 90 percent of the U.S. production of Native spearmint is produced within the Far West production area. Also, most of the world's supply of Native spearmint is produced in the United States.

The supply and demand characteristics of the current Native spearmint oil market, combined with the stabilizing impact of the marketing order, have kept the price relatively steady. The average price for the five-year period ending in 2006 is $9.80, which is $0.06 higher than the average price for the ten-year period (1997–2006) of $9.74. The Committee considers these levels too low for the majority of producers to maintain viability. The WSU study referenced earlier indicates that the cost of producing Native spearmint oil ranges from $10.26 to $10.92 per pound.

Similar to Scotch, the low level of producer returns has also caused an overall reduction in Native spearmint acreage. When the order became effective in 1980, the Far West region had 12,153 acres of Native spearmint. The Committee reported that the 2007–2008 acreage of Native spearmint was 8,436 acres, which resulted in 1,221,238 pounds of Native oil.

The Committee recommended the 2008–2009 Native spearmint oil salable quantity (1,184,748 pounds) and allotment percentage (53 percent) utilizing sales estimates for 2008–2009 Native oil as provided by several of the industry's handlers, as well as historical and current Native spearmint oil sales levels. The Committee is estimating that about 1,250,000 pounds of Native spearmint oil, on average, may be sold during the 2008–2009 marketing year. When considered in conjunction with the estimated carry-in of 56,433 pounds of oil on June 1, 2008, the recommended salable quantity of 1,184,748 pounds results in a total available supply of Native spearmint oil next year of about 1,241,181 pounds.

The Committee's method of calculating the Native spearmint oil salable quantity and allotment percentage continues to primarily utilize information on price and available supply as they are affected by the estimated trade demand. The Committee's stated intent is to make adequate supplies available to meet market needs and improve producer prices.

The Committee believes that the order has contributed extensively to the stabilization of producer prices, which prior to 1980 experienced wide fluctuations from year to year. According to the National Agricultural Statistics Service, for example, the average price paid for both classes of spearmint oil ranged from $4.00 per pound to $11.10 per pound during the period between 1968 and 1980. Prices since the order's inception, the period from 1980 to 2006, have generally stabilized at an average price of $12.69 per pound for Scotch spearmint oil and $9.89 per pound for Native spearmint oil.

The Committee based its recommendation for the proposed salable quantity and allotment percentage for each class of spearmint oil for the 2008–2009 marketing year on the information discussed above, as well as the data outlined below.

(1) Class 1 (Scotch) Spearmint Oil

(A) Estimated carry-in on June 1, 2008—0 pounds. This figure is the difference between the revised 2007–2008 marketing year total available supply of 816,718 pounds and the estimated 2007–2008 marketing year trade demand of 816,718 pounds.

(B) Estimated trade demand for the 2008–2009 marketing year—920,000 pounds. This figure was based on input from producers at six Scotch spearmint oil production area meetings held in September 2007, as well as estimates provided by handlers and other meeting participants at the October 17, 2007, meeting. The average estimated trade demand provided at the six production area meetings was 924,583 pounds, whereas the estimated handler trade demand ranged from 875,000 to 950,000 pounds. The average of sales over the last five years was 760,152 pounds.

(C) Salable quantity required from the 2008–2009 marketing year production—920,000 pounds. This figure is the difference between the estimated 2008–2009 marketing year trade demand (920,000 pounds) and the estimated carry-in on June 1, 2008 (0 pounds).

(D) Total estimated allotment base for the 2008–2009 marketing year—1,986,133 pounds. This figure represents a one percent increase over the revised 2007–2008 total allotment base. This figure is generally revised each year on June 1 because of producer base being lost to the bona fide effort production provisions of § 985.53(e). The revision is usually minimal.

(E) Computed allotment percentage—46.3 percent. This percentage is computed by dividing the required salable quantity by the total estimated allotment base.

(F) Recommended allotment percentage—50 percent. This

recommendation was based on the Committee's determination that the computed 46.3 percent would not adequately supply the potential 2008–2009 market.

(G) The Committee's recommended salable quantity—993,067 pounds. This figure is the product of the recommended allotment percentage and the total estimated allotment base.

(H) Estimated available supply for the 2008–2009 marketing year—993,067 pounds. This figure is the sum of the 2008–2009 recommended salable quantity (993,067 pounds) and the estimated carry-in on June 1, 2008 (0 pounds).

(2) Class 3 (Native) Spearmint Oil

(A) Estimated carry-in on June 1, 2008—56,433 pounds. The Committee's estimated carry-in reflects anticipated increases to the salable quantity and allotment percentage that may be needed to meet demand during the remainder of the 2007–2008 marketing year.

(B) Estimated trade demand for the 2008–2009 marketing year—1,250,000 pounds. This figure was based on input from producers at the six Native spearmint oil production area meetings held in September 2007, as well as estimates provided by handlers and other meeting participants at the October 17, 2007, meeting. The average estimated trade demand provided at the six production area meetings was 1,241,667 pounds, whereas the handler estimate ranged from 1,200,000 pounds to 1,250,000 pounds.

(C) Salable quantity required from the 2008–2009 marketing year production—1,193,567 pounds. This figure is the difference between the estimated 2008–2009 marketing year trade demand (1,250,000 pounds) and the estimated carry-in on June 1, 2008 (56,433 pounds).

(D) Total estimated allotment base for the 2008–2009 marketing year—2,235,374 pounds. This figure represents a one percent increase over the revised 2007–2008 total allotment base. This figure is generally revised each year on June 1 because of producer base being lost to the bona fide effort production provisions of § 985.53(e). The revision is usually minimal.

(E) Computed allotment percentage—53.4 percent. This percentage is computed by dividing the required salable quantity by the total estimated allotment base.

(F) Recommended allotment percentage—53 percent. This was the Committee's recommendation based on the computed allotment percentage, the average of the computed allotment percentage figures from the six production area meetings (53.7 percent), and input from producers and handlers at the October 17, 2007, meeting.

(G) The Committee's recommended salable quantity—1,184,748 pounds. This figure is the product of the recommended allotment percentage and the total estimated allotment base.

(H) Estimated available supply for the 2008–2009 marketing year—1,241,181 pounds. This figure is the sum of the 2008–2009 recommended salable quantity (1,184,748 pounds) and the estimated carry-in on June 1, 2008 (56,433 pounds).

The salable quantity is the total quantity of each class of spearmint oil, which handlers may purchase from, or handle on behalf of producers during a marketing year. Each producer is allotted a share of the salable quantity by applying the allotment percentage to the producer's allotment base for the applicable class of spearmint oil.

The Committee's recommended Scotch and Native spearmint oil salable quantities and allotment percentages of 993,067 pounds and 50 percent, and 1,184,748 pounds and 53 percent, respectively, are based on the Committee's goal of maintaining market stability by avoiding extreme fluctuations in supplies and prices, and the anticipated supply and trade demand during the 2008–2009 marketing year. The salable quantities are not expected to cause a shortage of spearmint oil supplies. Any unanticipated or additional market demand for spearmint oil, which may develop during the marketing year, can be satisfied by an increase in the salable quantities. Both Scotch and Native spearmint oil producers who produce more than their annual allotments during the 2008–2009 marketing year may transfer such excess spearmint oil to a producer with spearmint oil production less than their annual allotment or put it into the reserve pool before November 1, 2008.

This regulation is similar to regulations issued in prior seasons. Costs to producers and handlers resulting from this rule are expected to be offset by the benefits derived from a stable market and improved returns. In conjunction with the issuance of this final rule, USDA has reviewed the Committee's marketing policy statement for the 2008–2009 marketing year. The Committee's marketing policy statement, a requirement whenever the Committee recommends volume regulations, fully meets the intent of § 985.50 of the order. During its discussion of potential 2008–2009 salable quantities and allotment percentages, the Committee considered: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) the prospective production of each class of oil; (4) the total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity. Conformity with the USDA's ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' has also been reviewed and confirmed.

The establishment of these salable quantities and allotment percentages will allow for anticipated market needs. In determining anticipated market needs, consideration by the Committee was given to historical sales, as well as changes and trends in production and demand. This rule also provides producers with information on the amount of spearmint oil that should be produced for the 2008–2009 season in order to meet anticipated market demand.

Final Regulatory Flexibility Analysis

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

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

There are eight spearmint oil handlers subject to regulation under the order, and approximately 58 producers of Scotch spearmint oil and approximately 90 producers of Native spearmint oil in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $6,500,000, and small agricultural producers are defined as those having annual receipts of less than $750,000.

Based on the SBA's definition of small entities, the Committee estimates

that one of the eight handlers regulated by the order could be considered a small entity. Most of the handlers are large corporations involved in the international trading of essential oils and the products of essential oils. In addition, the Committee estimates that 19 of the 58 Scotch spearmint oil producers and 21 of the 90 Native spearmint oil producers could be classified as small entities under the SBA definition. Thus, a majority of handlers and producers of Far West spearmint oil may not be classified as small entities.

The Far West spearmint oil industry is characterized by producers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of spearmint oil. A typical spearmint oil-producing operation has enough acreage for rotation such that the total acreage required to produce the crop is about one-third spearmint and two-thirds rotational crops. Thus, the typical spearmint oil producer has to have considerably more acreage than is planted to spearmint during any given season. Crop rotation is an essential cultural practice in the production of spearmint oil for weed, insect, and disease control. To remain economically viable with the added costs associated with spearmint oil production, most spearmint oil-producing farms fall into the SBA category of large businesses.

Small spearmint oil producers generally are not as extensively diversified as larger ones and as such are more at risk from market fluctuations. Such small producers generally need to market their entire annual allotment and do not have the luxury of having other crops to cushion seasons with poor spearmint oil returns. Conversely, large diversified producers have the potential to endure one or more seasons of poor spearmint oil markets because income from alternate crops could support the operation for a period of time. Being reasonably assured of a stable price and market provides small producing entities with the ability to maintain proper cash flow and to meet annual expenses. Thus, the market and price stability provided by the order potentially benefit the small producer more than such provisions benefit large producers. Even though a majority of handlers and producers of spearmint oil may not be classified as small entities, the volume control feature of this order has small entity orientation.

This final rule establishes the quantity of spearmint oil produced in the Far West, by class that handlers may purchase from, or handle for, producers during the 2008–2009 marketing year. The Committee recommended this rule to help maintain stability in the spearmint oil market by avoiding extreme fluctuations in supplies and prices. Establishing quantities to be purchased or handled during the marketing year through volume regulations allows producers to plan their spearmint planting and harvesting to meet expected market needs. The provisions of §§ 985.50, 985.51, and 985.52 of the order authorize this rule.

Instability in the spearmint oil sub-sector of the mint industry is much more likely to originate on the supply side than the demand side. Fluctuations in yield and acreage planted from season-to-season tend to be larger than fluctuations in the amount purchased by buyers. Demand for spearmint oil tends to be relatively stable from year-to-year. The demand for spearmint oil is expected to grow slowly for the foreseeable future because the demand for consumer products that use spearmint oil will likely expand slowly, in line with population growth.

Demand for spearmint oil at the farm level is derived from retail demand for spearmint-flavored products such as chewing gum, toothpaste, and mouthwash. The manufacturers of these products are by far the largest users of mint oil. However, spearmint flavoring is generally a very minor component of the products in which it is used, so changes in the raw product price have no impact on retail prices for those goods.

Spearmint oil production tends to be cyclical. Years of large production, with demand remaining reasonably stable, have led to periods in which large producer stocks of unsold spearmint oil have depressed producer prices for a number of years. Shortages and high prices may follow in subsequent years, as producers respond to price signals by cutting back production.

The significant variability is illustrated by the fact that the coefficient of variation (a standard measure of variability; ''CV'') of Far West spearmint oil production from 1980 through 2006 was about 0.23. The CV for spearmint oil grower prices was about 0.14, well below the CV for production. This provides an indication of the price stabilizing impact of the marketing order.

Production in the shortest marketing year was about 50 percent of the 26-year average (1.84 million pounds from 1980 through 2006) and the largest crop was approximately 167 percent of the 26-year average. A key consequence is that in years of oversupply and low prices the season average producer price of spearmint oil is below the average cost of production (as measured by the Washington State University Cooperative Extension Service.)

The wide fluctuations in supply and prices that result from this cycle, which was even more pronounced before the creation of the marketing order, can create liquidity problems for some producers. The marketing order was designed to reduce the price impacts of the cyclical swings in production. However, producers have been less able to weather these cycles in recent years because of the increase in production costs. While prices have been relatively steady, the cost of production has dramatically increased which has caused a hesitation by producers to plant. Producers are also enticed by the prices of alternative crops and their lower cost of production.

In an effort to stabilize prices, the spearmint oil industry uses the volume control mechanisms authorized under the order. This authority allows the Committee to recommend a salable quantity and allotment percentage for each class of oil for the upcoming marketing year. The salable quantity for each class of oil is the total volume of oil that producers may sell during the marketing year. The allotment percentage for each class of spearmint oil is derived by dividing the salable quantity by the total allotment base.

Each producer is then issued an annual allotment certificate, in pounds, for the applicable class of oil, which is calculated by multiplying the producer's allotment base by the applicable allotment percentage. This is the amount of oil for the applicable class that the producer can sell.

On November 1 of each year, the Committee identifies any oil that individual producers have produced above the volume specified on their annual allotment certificates. This excess oil is placed in a reserve pool administered by the Committee.

There is a reserve pool for each class of oil that may not be sold during the current marketing year unless USDA approves a Committee recommendation to make a portion of the pool available. However, limited quantities of reserve oil are typically sold to fill deficiencies. A deficiency occurs when on-farm production is less than a producer's allotment. In that case, a producer's own reserve oil can be sold to fill that deficiency. Excess production (higher than the producer's allotment) can be sold to fill other producers' deficiencies. All of this needs to take place by November 1.

In any given year, the total available supply of spearmint oil is composed of

current production plus carry-over stocks from the previous crop. The Committee seeks to maintain market stability by balancing supply and demand, and to close the marketing year with an appropriate level of carryout. If the industry has production in excess of the salable quantity, then the reserve pool absorbs the surplus quantity of spearmint oil, which goes unsold during that year, unless the oil is needed for unanticipated sales.

Under its provisions, the order may attempt to stabilize prices by (1) limiting supply and establishing reserves in high production years, thus minimizing the price-depressing effect that excess producer stocks have on unsold spearmint oil, and (2) ensuring that stocks are available in short supply years when prices would otherwise increase dramatically. The reserve pool stocks grown in large production years are drawn down in short crop years.

An econometric model was used to assess the impact that volume control has on the prices producers receive for their commodity. Without volume control, spearmint oil markets would likely be over-supplied, resulting in low producer prices and a large volume of oil stored and carried over to the next crop year. The model estimates how much lower producer prices would likely be in the absence of volume controls.

The Committee estimated the trade demand for the 2008–2009 marketing year for both classes of oil at 2,170,000 pounds, and that the expected combined carry-in will be 56,433 pounds. This results in a combined required salable quantity of 2,113,567 pounds. Therefore, with volume control, sales by producers for the 2008–2009 marketing year will be limited to 2,177,815 pounds (the recommended salable quantity for both classes of spearmint oil).

The recommended salable percentages, upon which 2008–2009 producer allotments are based, are 50 percent for Scotch and 53 percent for Native. Without volume controls, producers would not be limited to these allotment levels, and could produce and sell additional spearmint. The econometric model estimated a $1.40 decline in the season average producer price per pound (from both classes of spearmint oil) resulting from the higher quantities that would be produced and marketed without volume control. The surplus situation for the spearmint oil market that would exist without volume controls in 2008–2009 also would likely dampen prospects for improved producer prices in future years because of the buildup in stocks.

The use of volume controls allows the industry to fully supply spearmint oil markets while avoiding the negative consequences of over-supplying these markets. The use of volume controls is believed to have little or no effect on consumer prices of products containing spearmint oil and will not result in fewer retail sales of such products.

The Committee discussed alternatives to the recommendations contained in this rule for both classes of spearmint oil. The Committee discussed and rejected the idea of recommending that there not be any volume regulation for both classes of spearmint oil because of the severe price-depressing effects that would occur without volume control.

The Committee considered various alternative levels of volume control for Scotch spearmint oil, including increasing the percentage to a less restrictive level, or decreasing the percentage. After considerable discussion the Committee unanimously determined that 993,067 pounds and 50 percent would be the most effective salable quantity and allotment percentage, respectively, for the 2008–2009 marketing year.

The Committee also considered various alternative levels of volume control for Native spearmint oil. After considerable discussion the Committee unanimously determined that 1,184,748 pounds and 53 percent would be the most effective salable quantity and allotment percentage, respectively, for the 2008–2009 marketing year.

As noted earlier, the Committee's recommendation to establish salable quantities and allotment percentages for both classes of spearmint oil was made after careful consideration of all available information, including: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) the prospective production of each class of oil; (4) the total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity. Based on its review, the Committee believes that the salable quantity and allotment percentage levels recommended will achieve the objectives sought.

Without any regulations in effect, the Committee believes the industry would return to the pronounced cyclical price patterns that occurred prior to the order, and that prices in 2008–2009 would decline substantially below current levels.

As stated earlier, the Committee believes that the order has contributed extensively to the stabilization of producer prices, which prior to 1980 experienced wide fluctuations from year-to-year. National Agricultural Statistics Service records show that the average price paid for both classes of spearmint oil ranged from $4.00 per pound to $11.10 per pound during the period between 1968 and 1980. Prices have been consistently more stable since the marketing order's inception in 1980, with an average price for the period from 1980 to 2006 of $12.69 per pound for Scotch spearmint oil and $9.89 per pound for Native spearmint oil.

According to the Committee, the recommended salable quantities and allotment percentages are expected to achieve the goals of market and price stability.

As previously stated, annual salable quantities and allotment percentages have been issued for both classes of spearmint oil since the order's inception. Reporting and recordkeeping requirements have remained the same for each year of regulation. These requirements have been approved by the Office of Management and Budget under OMB Control No. 0581–0178, Vegetable and Specialty Crops. Accordingly, this action will not impose any additional reporting or recordkeeping requirements on either small or large spearmint oil producers and handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

In addition, the Committee's meeting was widely publicized throughout the spearmint oil industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the October 17, 2007, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

A proposed rule concerning this action was published in the **Federal Register** on February 15, 2008 (73 FR 8825). Copies of the rule were provided to Committee staff, which in turn made it available to spearmint oil producers, handlers, and other interested persons. Finally, the rule was made available through the Internet by USDA and the Office of the **Federal Register**. A 30-day comment period, ending March 17, 2008, was provided to allow interested persons to respond to the proposal. No comments were received.

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

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

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

■ For the reasons set forth in the preamble, 7 CFR Part 985 is amended as follows:

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

■ 1. The authority citation for 7 CFR part 985 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. A new § 985.227 is added to read as follows:

[**Note:** This section will not appear in the Code of Federal Regulations.]

§ 985.227 Salable quantities and allotment percentages—2008–2009 marketing year.

The salable quantity and allotment percentage for each class of spearmint oil during the marketing year beginning on June 1, 2008, shall be as follows:

(a) Class 1 (Scotch) oil—a salable quantity of 993,067 pounds and an allotment percentage of 50 percent.

(b) Class 3 (Native) oil—a salable quantity of 1,184,748 pounds and an allotment percentage of 53 percent.

Dated: April 15, 2008.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E8–8468 Filed 4–18–08; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0197 Directorate Identifier 2008–CE–005–AD; Amendment 39–15467; AD 2008–08–15]

RIN 2120–AA64

Airworthiness Directives; DORNIER LUFTFAHRT GmbH Models 228–100, 228–101, 228–200, 228–201, 228–202, and 228–212 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) issued 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:

The manufacturer reported findings of missing primer on the internal of the elevator and rudder of aircraft S/N 8200. The aircraft S/N 8200 was with RUAG for maintenance purposes. Investigation performed by RUAG showed that the paint removal procedure for the rudder and elevator was changed from a paint stripping with brush and scraper to a procedure where the parts were submerged in a tank filled with hot liquid stripper. The stripper is called TURCO 5669 from Henkel Surface Technologies. The stripping process is described in the Technical Process Bulletin No. 238799 dated 09/01/1999. This paint stripping process change was not communicated to and not approved by the TC–Holder.

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

DATES: This AD becomes effective May 27, 2008.

On May 27, 2008, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at 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: 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:

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 February 25, 2008 (73 FR 9965). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

The manufacturer reported findings of missing primer on the internal of the elevator and rudder of aircraft S/N 8200. The aircraft S/N 8200 was with RUAG for maintenance purposes. Investigation performed by RUAG showed that the paint removal procedure for the rudder and elevator was changed from a paint stripping with brush and scraper to a procedure where the parts were submerged in a tank filled with hot liquid stripper. The stripper is called TURCO 5669 from Henkel Surface Technologies. The stripping process is described in the Technical Process Bulletin No. 238799 dated 09/01/1999. This paint stripping process change was not communicated to and not approved by the TC–Holder.

Comments

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

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

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 FAA policies.

Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

Based on the service information, we estimate that this AD will affect 8 products of U.S. registry. We also estimate that it will take about 3 work-hours per product to comply with basic requirements of this AD. The average labor rate is $80 per work-hour.

Based on these figures, we estimate the cost of this AD to the U.S. operators to be $1,920 or $240 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 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 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 Management Facility 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 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:

2008–08–15 Dornier Luftfahrt GmbH: Amendment 39–15467; Docket No. FAA–2008–0197; Directorate Identifier 2008–CE–005–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective May 27, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Models 228–100, 228–101, 228–200, 228–201, 228–202, and 228–212 airplanes, serial numbers 8009, 8065, 8112, 8179, 8185, 8191, 8241, and 8244, certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 51: Structures.

Reason

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

The manufacturer reported findings of missing primer on the internal of the elevator and rudder of aircraft S/N 8200. The aircraft S/N 8200 was with RUAG for maintenance purposes. Investigation performed by RUAG showed that the paint removal procedure for the rudder and elevator was changed from a paint stripping with brush and scraper to a procedure where the parts were submerged in a tank filled with hot liquid stripper. The stripper is called TURCO 5669 from Henkel Surface Technologies. The stripping process is described in the Technical Process Bulletin No. 238799 dated 09/01/1999. This paint stripping process change was not communicated to and not approved by the TC–Holder.

The MCAI requires you to do a visual inspection of the inner structure on rudder and elevator for signs of corrosion, de-bonded primer (yellow-green), and any other deviation of surface protection; report corrosion beyond the acceptable level or areas with de-bonded primer to the manufacturer; and, if necessary, repair the affected parts following the applicable FAA-approved manufacturer repair instruction.

Actions and Compliance

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

(1) Within 2 months after the effective date of this AD, do a detailed visual inspection on the inner structure of the rudder and elevator for signs of corrosion, debonded primer (yellow-green), and any other deviation of surface protection following RUAG Aerospace Defence Technology Dornier 228 Service Bulletin No. SB–228–270, dated October 30, 2007.

(2) If you find corrosion or areas with debonded primer as a result of the inspection required by paragraph (f)(1) of this AD, before further flight, do the following:

(i) Report the inspection results to RUAG Aerospace Services GmbH, Dornier 228 Customer Support, P.O. Box 1253, 82231 Wessling, Federal Republic of Germany, telephone: 011–49–8153–30–2280; fax: 011–49–8153–30–3030, and request FAA-approved repair instructions following RUAG Aerospace Defence Technology Dornier 228 Service Bulletin No. SB–228–270, dated October 30, 2007.

(ii) Repair corrosion following FAA-approved repair instructions obtained from RUAG Aerospace Services GmbH.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: The MCAI includes provisions for reporting corrosion ''beyond the acceptable level.'' However, the service information does not include a definition of ''acceptable level.'' Therefore, to ensure the AD is clear for U.S. operators and is enforceable, this AD does not include the qualifier ''beyond the acceptable level.''

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 German AD D–2007–350, dated December 19, 2007; and RUAG Aerospace Defence Technology Dornier 228 Service Bulletin No. SB–228–270, dated October 30, 2007, for related information.

Material Incorporated by Reference

(i) You must use RUAG Aerospace Defence Technology Dornier 228 Service Bulletin No. SB–228–270, dated October 30, 2007, 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 RUAG Aerospace Services GmbH, Dornier 228 Customer Support, P.O. Box 1253, 82231 Wessling, Federal Republic of Germany, telephone: +49 (0)8153–30–2280; fax: +49 (0) 8153–30–3030.

(3) You may review copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, 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/cfr/ibr-locations.html.*

Issued in Kansas City, Missouri, on April 4, 2008.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–7806 Filed 4–18–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0314; Directorate Identifier 2008–NE–09–AD; Amendment 39–15471; AD 2008–08–17]

RIN 2120–AA64

Airworthiness Directives; Kelly Aerospace Power Systems Turbochargers

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Kelly Aerospace Power Systems turbochargers. This AD requires a onetime visual inspection of suspect turbochargers for an excessive gap between the turbocharger turbine housing flange and the exhaust tube flange, and replacement of turbochargers that fail the gap inspection. This AD results from two reports of exhaust leakage occurring between the turbocharger turbine housing flange and the exhaust tube flange due to machining defects of the turbocharger turbine housing flange. We are issuing this AD to prevent hazardous amounts of carbon monoxide from entering the cabin, an increase in under-cowl temperatures hampering engine and accessory function, and loss of tailpipe retention, which could lead to an in-flight fire and loss of control of the airplane.

DATES: This AD becomes effective May 6, 2008. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of May 6, 2008.

We must receive any comments on this AD by June 20, 2008.

ADDRESSES: Use one of the following addresses to comment on this AD:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* U.S. Docket Management Facility, Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Contact Lycoming, 652 Oliver Street, Williamsport, PA 17701; telephone (570) 323–6181; fax (570) 327–7101, or on the Internet at *http://www.Lycoming.Textron.com* for the Lycoming Mandatory Service Bulletin in this AD. Contact Kelly Aerospace Power Systems, 2500 Selma Highway, Montgomery, AL 36108, telephone (334) 386–5450; fax (334) 386–5450; or on the Internet at *http://www.kellyaerospace.com* for the Kelly Aerospace Power Systems Mandatory Service Bulletins in this AD.

FOR FURTHER INFORMATION CONTACT: Kevin Brane, Aerospace Engineer, Atlanta Aircraft Certification Office, FAA, Small Airplane Directorate, One Crown Center, 1895 Phoenix Blvd., Suite 450, Atlanta, GA 30349; e-mail: *kevin.brane@faa.gov*; telephone (770) 703–6063; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: In January 2008, Lycoming Engines notified us, and Kelly Aerospace Power Systems, of two reports of exhaust leakage occurring between the turbocharger turbine housing flange and the exhaust tube flange. Lycoming Engines found machining defects in the turbine housing exit flanges of those Kelly Aerospace Power Systems turbochargers. Kelly Aerospace Power Systems investigated this quality escape, and found that the same machining defect may exist on as many as 310 turbochargers. This condition, if not corrected, could result in hazardous amounts of carbon monoxide entering the cabin and an increase in under-cowl temperatures hampering engine and accessory function. This condition could also result in loss of tailpipe retention, which could lead to an in-flight fire and loss of control of the airplane.

Relevant Service Information

We have reviewed and approved the technical contents of Lycoming Engines Mandatory Service Bulletin (MSB) No. 580, dated February 15, 2008, Kelly Aerospace Power Systems MSB No. 029, dated February 1, 2008, Kelly Aerospace Power Systems MSB No. 030, Revision A, dated April 1, 2008, and Kelly Aerospace Power Systems MSB No. 031, dated February 28, 2008. These MSBs list affected engine model numbers and suspect turbocharger part numbers and serial numbers.

FAA's Determination and Requirements of this AD

The unsafe condition described previously is likely to exist or develop on other Kelly Aerospace Power Systems turbochargers of the same type design. For that reason, we are issuing this AD to prevent hazardous amounts

of carbon monoxide from entering the cabin, an increase in under-cowl temperatures hampering engine and accessory function, and loss of tailpipe retention, which could lead to an in-flight fire and loss of control of the airplane. This AD requires a onetime visual inspection of suspect turbochargers for an excessive gap between the turbocharger turbine housing flange and the exhaust tube flange, and replacement of turbochargers that fail the gap inspection. You must use the service information previously described to identify the suspect population of turbochargers affected by this AD.

FAA's Determination of the Effective Date

Since an unsafe condition exists that requires the immediate adoption of this AD, we have found that notice and opportunity for public comment before issuing this AD are impracticable. Good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, we invite you to send us any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES**. Include ''AD Docket No. FAA–2008–0314; Directorate Identifier 2008–NE–09–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it.

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

Examining the AD Docket

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

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 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 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

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. The FAA amends § 39.13 by adding the following new airworthiness directive:

2008–08–17 Kelly Aerospace Power Systems: Amendment 39–15471. Docket No. FAA–2008–0314; Directorate Identifier 2008–NE–09–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective May 6, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the turbochargers referenced in paragraphs (c)(1) through (c)(15)(vi) of this AD:

(1) Kelly Aerospace Power Systems (KAPS) turbochargers, part number (P/N) 409170–0001 (Lycoming P/N LW–12463), installed on Lycoming Engines (L)TIO–540–J2B and (L)TIO–540–J2BD engines:

(i) With the engine serial numbers (SNs) listed in Table 1 of Lycoming Engines Mandatory Service Bulletin (MSB) No. 580, dated February 15, 2008; and

(ii) With the turbocharger SNs listed in KAPS MSB No. 029, dated February 1, 2008.

(iii) Lycoming Engines (L)TIO–540–J2B and (L)TIO–540–J2BD engines are installed on, but not limited to, Piper PA31–350 Navajo Chieftain, Piper T1020 airplanes, and Colemill Panther conversion airplanes using a 350 horsepower engine.

(2) KAPS turbochargers, P/N 465930–0003 (Teledyne Continental Motors (TCM) P/N 641672–3), installed on TCM GTSIO–520–L and GTSIO–520–N engines, with the turbocharger SNs listed in KAPS MSB No. 030, Revision A, dated April 1, 2008.

(3) KAPS turbochargers, P/N 466412–0003 (TCM P/N 652964), installed on TCM TSIOL–550–A and TSIOL–550–C engines, with the turbocharger SNs listed in KAPS MSB No. 030, Revision A, dated April 1, 2008.

(4) KAPS turbochargers, P/N 466412–0004, installed on RAM modifications only, with the turbocharger SNs listed in KAPS MSB No. 030, Revision A, dated April 1, 2008.

(5) KAPS turbochargers, P/N 466412–0003 (TCM P/N 652964), installed on Cessna 414 airplanes with a TCM TSIOL–550–A or TSIOL–550–C engine (Supplemental Type Certificate (STC) SA7633SW), with the turbocharger SNs listed in KAPS MSB No. 030, Revision A, dated April 1, 2008.

(6) KAPS turbochargers, P/N 465930–0003 (TCM P/N 641672–3), installed on Cessna

421 Golden Eagle airplanes with a TCM GTSIO–520–L or GTSIO–52–N engine with the turbocharger SNs listed in KAPS MSB No. 030, Revision A, dated April 1, 2008.

(7) KAPS turbochargers, P/N 465680–0004 (Cessna P/N C295001–0202), installed on TCM TSIO–520–AF or TSIO–520–P engines, with the turbocharger SNs listed in KAPS MSB No. 030, Revision A, dated April 1, 2008.

(8) KAPS turbochargers, P/N 465930–0002 (TCM P/N 641672–2), installed on TCM GTSIO–520–M engines, with the turbocharger SNs listed in KAPS MSB No. 030, Revision A, dated April 1, 2008.

(9) KAPS turbochargers, P/N 465680–0004 (Cessna P/N C295001–0202), installed on Cessna P210 Pressurized Centurion airplanes with a TCM TSIO–520–AF or TSIO–520–P engine, with the turbocharger SNs listed in KAPS MSB No. 030, Revision A, dated April 1, 2008.

(10) KAPS turbochargers, P/N 465930–0002 (TCM P/N 641672–2), installed on Cessna 404 Titan airplanes with a TCM GTSIO–520–M engine, with the turbocharger SNs listed in KAPS MSB No. 030, Revision A, dated April 1, 2008.

(11) KAPS overhauled turbochargers, P/N 465930–9003, installed on TCM GTSIO–520–L or GTSIO–520–N engines, with the turbocharger SNs listed in KAPS MSB No. 031, dated February 28, 2008.

(12) KAPS overhauled turbochargers, P/N 409170–9001, installed on Lycoming Engines TIO–540–J2B; TIO–540–J2BD; TIO–540–N2BD, and LTIO–540–N2BD engines, with the turbocharger SNs listed in KAPS MSB No. 031, dated February 28, 2008.

(13) KAPS overhauled turbochargers, P/N 465680–9005, installed on Lycoming Engines TIO–540–V2AD and TIO–540–W2A engines, with the turbocharger SNs listed in KAPS MSB No. 031, dated February 28, 2008.

(14) KAPS overhauled turbochargers, P/N 465930–9002, installed on TCM GTSIO–520–M engines, with the turbocharger SNs listed in KAPS MSB No. 031, dated February 28, 2008.

(15) Also, the following KAPS turbochargers might have been overhauled or repaired by other than KAPS, that used a P/N 441977–0023S or P/N 441977–0025S turbine housing sold as a spare part, through the Aviall Company. These turbine housings have the date code of 1006 and might have been installed between October 2006 and January 25, 2008. The turbocharger data plates might include manufacturer's information other than KAPS information, such as, Garrett:

(i) P/N 409170–0001; installed on Lycoming Engines TIO–540–J2B; TIO–540–J2BD; TIO–540–N2BD; and LTIO versions of the noted engine models.

(ii) P/N 465680–0004; installed on TCM TSIO–520–AF and TSIO–520P engines.

(iii) P/N 465680–0005; installed on Lycoming Engines TIO–540–V2AD and TIO–540–W2A engines.

(iv) P/N 465930–0002; installed on TCM GTSIO–520–M engines.

(v) P/N 465930–0003; installed on TCM GTSIO–520–L and GTSIO–520–N engines.

(vi) P/N 465448–0004; installed on TCM TSIO–520–CE engines.

(vii) P/N 466412–0003; installed on TCM TSIOL–550–A and TSIOL–550–C engines.

(viii) P/N 466412–0004; installed on engines modified by RAM.

Unsafe Condition

(d) This AD results from two reports of exhaust leakage occurring between the turbocharger turbine housing flange and the exhaust tube flange due to machining defects of the turbocharger turbine housing flange. We are issuing this AD to prevent hazardous amounts of carbon monoxide from entering the cabin, an increase in under-cowl temperatures hampering engine and accessory function, and loss of tailpipe retention, which could lead to an in-flight fire and loss of control of the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within 10 hours time-in-service or at the next regular inspection interval, whichever occurs first, unless the actions have already been done.

Onetime Visual Inspection of Turbocharger

(f) Carefully remove the ''V'' band clamp from around the turbocharger turbine housing at the turbocharger exhaust outlet, taking care not to move the exhaust tube and tailpipe assembly.

(g) Visually inspect the area that was captured by the ''V'' band clamp. Use a feeler gauge at the split line between the turbine housing flange and the exhaust tube flange all around the circumference.

(h) The maximum gap must not exceed 0.005 inch.

(i) Before further flight, replace any turbocharger that exceeds the 0.005 inch maximum gap, with a serviceable turbocharger.

(j) If the maximum gap is not exceeded, metal stamp a 1/8″ upper case ''I'' on the side of the turbocharger discharge flange. Information on the stamping location can be found in the MSBs referenced in this AD.

Definition

(k) For the purpose of this AD, a serviceable turbocharger is one that is not listed in the suspect SN lists of the Lycoming Engines MSB or KAPS MSBs referenced in this AD, or one that passes the visual inspection in this AD.

Alternative Methods of Compliance

(l) The Manager, Atlanta Aircraft Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Special Flight Permits

(m) Under 39.23, we are limiting the special flight permits for this AD by the following condition:

(1) A special flight permit to fly the airplane to where the visual inspection can be done may be issued after the operator verifies that the turbocharger tailpipe assembly is secure.

(2) To verify, apply a side load and a vertical load to the tailpipe assembly by hand. No mechanical deflection is allowed.

(3) After verifying that the tailpipe assembly is secure, the operator can apply for a special flight permit from the FAA. The FAA office or person approving the permit must add this condition to the limitations of the special flight permit.

Previous Credit

(n) If you used Kelly Aerospace Power Systems MSB No. 030, dated February 15, 2008 before the effective date of this AD to identify the suspect population of turbochargers identified in applicability paragraphs (c)(2) through (c)(9) of this AD, you satisfied the requirements of those paragraphs in this AD.

Related Information

(o) Contact Kevin Brane, Aerospace Engineer, Atlanta Aircraft Certification Office, FAA, Small Airplane Directorate, One Crown Center, 1895 Phoenix Blvd., Suite 450, Atlanta, GA 30349; e-mail: *kevin.brane@faa.gov*; telephone (770) 703–6063; fax (770) 703–6097, for more information about this AD.

Material Incorporated by Reference

(p) You must use the service information specified in Table 1 of this AD to identify the suspect population of turbochargers being inspected 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 Lycoming, 652 Oliver Street, Williamsport, PA 17701; telephone (570) 323–6181; fax (570) 327–7101, or go on the Internet at *http://www.Lycoming.Textron.com* for a copy of their service information. Also, contact Kelly Aerospace Power Systems, 2500 Selma Highway, Montgomery, AL 36108, telephone (334) 386–5450; fax (334) 386–5450, or go on the Internet at *http://www.kellyaerospace.com* for a copy of their 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

Mandatory Service Bulletin (MSB) No.	Page	Revision	Date
Lycoming MSB No. 580	ALL	Original	February 15, 2008.

TABLE 1.—INCORPORATION BY REFERENCE—Continued

Mandatory Service Bulletin (MSB) No.	Page	Revision	Date
Total Pages: 6			
Kelly Aerospace Power Systems MSB No. 029	ALL	Original	February 1, 2008.
Total Pages: 4			
Kelly Aerospace Power Systems MSB No. 030	ALL	A	April 1, 2008.
Total Pages: 5			
Kelly Aerospace Power Systems MSB No. 031	ALL	Original	February 28, 2008.
Total Pages: 5			

Issued in Burlington, Massachusetts, on April 10, 2008.

Peter A. White,

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

[FR Doc. E8–8120 Filed 4–18–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0116; Directorate Identifier 2007–NM–257–AD; Amendment 39–15474; AD 2008–08–20]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Falcon 2000 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:

Wing anti ice telescopic tubes (P/N [part number] 5035–400 and 5035–500) ball joints were originally designed with high temperature polymer (Kynel™) sealing rings. Temperature induced cracking of these rings associated with long term wear has been encountered in a small number of cases. This degradation may lead to binding of the ball joint and high swiveling forces which may result in improper operation of the leading edge slats and also in failure of the ball joint mounting bracket with possible friction on the aileron control rod, which could lead, if combined with a failure of the aileron emergency actuator, to an aileron jamming.

The unsafe condition is a jammed aileron, which results in reduced controllability of the airplane. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective May 27, 2008.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of May 27, 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: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; 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 February 5, 2008 (73 FR 6618). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

Wing anti ice telescopic tubes (P/N [part number] 5035–400 and 5035–500) ball joints were originally designed with high temperature polymer (Kynel™) sealing rings. Temperature induced cracking of these rings associated with long term wear has been encountered in a small number of cases. This degradation may lead to binding of the ball joint and high swiveling forces which may result in improper operation of the leading edge slats and also in failure of the ball joint mounting bracket with possible friction on the aileron control rod, which could lead, if combined with a failure of the aileron emergency actuator, to an aileron jamming.

A replacement carbon based material has been defined by the telescopic tube manufacturer ZODIAC and can be applied per ZODIAC Service Bulletins (SB) 5035–30–001 and 5035–30–002, resulting in P/N re-designations 5035–600 Amdt.A and 5035–700 Amdt.A, respectively.

The purpose of this Airworthiness Directive (AD), by requiring modification of the wing anti-ice telescopic tubes in accordance with the ZODIAC service bulletins, is to ensure that no old definition sealing rings remain in operation beyond a life limit of 2,400 flight hours (FH) or 2,000 flight cycles (FC).

The unsafe condition is a jammed aileron, which results in reduced controllability of the airplane. 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 received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

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 about 159 products of U.S. registry. We also estimate that it will take about 4 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Required parts will cost about $1,423 per product. Where the service information lists required parts costs that are covered under warranty, we

have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $277,137, or $1,743 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:

2008–08–20 Dassault Aviation: Amendment 39–15474. Docket No. FAA–2008–0116; Directorate Identifier 2007–NM–257–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective May 27, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Dassault Model Falcon 2000 airplanes, certificated in any category; all serial numbers; equipped with wing anti-ice telescopic tubes having part number (P/N) 5035–400 or 5035–500.

Subject

(d) Air Transport Association (ATA) of America Code 30: Ice and rain protection.

Reason

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

Wing anti ice telescopic tubes (P/N [part number] 5035–400 and 5035–500) ball joints were originally designed with high temperature polymer (Kynel™) sealing rings. Temperature induced cracking of these rings associated with long term wear has been encountered in a small number of cases. This degradation may lead to binding of the ball joint and high swiveling forces which may result in improper operation of the leading edge slats and also in failure of the ball joint mounting bracket with possible friction on the aileron control rod, which could lead, if combined with a failure of the aileron emergency actuator, to an aileron jamming.

A replacement carbon based material has been defined by the telescopic tube manufacturer Zodiac and can be applied per Zodiac Service Bulletins (SB) 5035–30–001 and 5035–30–002, resulting in P/N redesignations 5035–600 Amdt.A and 5035–700 Amdt.A, respectively.

The purpose of this Airworthiness Directive (AD), by requiring modification of the wing anti-ice telescopic tubes in accordance with the Zodiac service bulletins, is to ensure that no old definition sealing rings remain in operation beyond a life limit of 2,400 flight hours (FH) or 2,000 flight cycles (FC).

The unsafe condition is a jammed aileron, which results in reduced controllability of the airplane.

Actions and Compliance

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

(1) At the later of the compliance times specified in paragraphs (f)(1)(i) and (f)(1)(ii) of this AD, remove and modify the affected tubes in accordance with instructions contained in Zodiac Service Bulletins 5035–30–001 and 5035–30–002, both dated April 15, 2002.

(i) Before the telescopic tubes, P/N 5035–400 and 5035–500, exceed the limit of 2,400 flight hours, or 2,000 flight cycles, time-in-service since new, whichever occurs first.

(ii) At the earlier of the times specified in paragraphs (f)(1)(ii)(A) and (f)(1)(ii)(B) of this AD.

(A) Within 330 flight hours after the effective date of this AD.

(B) Within 7 months after the effective date of this AD.

(2) As of 7 months after the effective date of this AD, no person may install an affected telescopic tube P/N 5035–400 or 5035–500 in any aircraft as a replacement part, unless it has been modified in accordance with instructions contained in Zodiac Service Bulletins 5035–30–001 and 5035–30–002, both dated April 15, 2002.

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, International Branch, ANM–116, Transport Airplane Directorate, 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: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; 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 European Aviation Safety Agency (EASA) Airworthiness Directive 2006–0276, dated September 6, 2006; and Zodiac Service Bulletins 5035–30–001 and 5035–30–002, both dated April 15, 2002; for related information.

Material Incorporated by Reference

(i) You must use Zodiac Service Bulletin 5035–30–001, dated April 15, 2002; and Zodiac Service Bulletin 5035–30–002, dated April 15, 2002; 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 Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606.

(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.*

Issued in Renton, Washington, on April 8, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–8253 Filed 4–18–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–29116; Directorate Identifier 2007–NM–064–AD; Amendment 39–15476; AD 2008–08–22]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–600, –700, –700C, –800, and –900 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes. This AD requires a one-time inspection to determine the material of the forward and aft gray water drain masts. For airplanes having composite gray water drain masts, this AD requires installation of a bonding jumper between a ground and the clamp on the tube of the forward and aft gray water composite drain masts. This AD results from a report of charred insulation blankets and burned wires around the forward gray water composite drain mast found during an inspection of the forward cargo compartment on a Model 767–300F airplane. We are issuing this AD to prevent a fire near a composite drain mast and possible disruption of the electrical power system caused by a lightning strike on a composite drain mast, which could result in the loss of several functions essential for safe flight.

DATES: This AD is effective May 27, 2008.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of May 27, 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: Nicholas Wilson, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6476; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) (the ''original NPRM'') to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to all Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes. That NPRM was published in the **Federal Register** on September 6, 2007 (72 FR 51201). That NPRM proposed to require a one-time inspection to determine the material of the forward and aft gray water drain masts. For airplanes having composite gray water drain masts, that NPRM also proposed to require installation of a bonding jumper between a ground and the clamp on the tube of the forward and aft gray water composite drain masts.

Actions Since NPRM Was Issued

Since we issued the NPRM, Boeing has issued new service information that includes corrected measurement values and procedures that should be followed if the resistance of the bonding jumper exceeds certain values during the initial resistance check.

We have reviewed Boeing Special Attention Service Bulletin 737–30–1056, Revision 1, dated October 25, 2007. The service bulletin describes procedures for installing a bonding jumper between a ground and the clamp on the tube of the forward and aft gray water composite drain mast. We have revised this final rule to refer to Revision 1 of the service bulletin as the appropriate source of service information for the required actions. We have also added paragraph (h) to this final rule to give credit for actions done previously in accordance with Boeing Special Attention Service Bulletin 737–30–1056, dated February 28, 2007, provided the results of the resistance measurement meet the values specified in Revision 1; we have re-identified subsequent paragraphs accordingly.

Comments

We have considered the following comments on the NPRM.

Request To Clarify the Proposed Applicability

Boeing requests that we revise the Applicability statement of the NPRM to clarify the affected airplanes. Boeing states that airplanes having line numbers 1935 and subsequent have the bonding jumper installed during production and should not be subject to the NPRM. Boeing asserts that the NPRM should only be applicable to airplanes delivered with composite drain masts without the bonding jumper or airplanes with spare interchangeability notes allowing replacement of the aluminum drain masts with composite drain masts.

We partially agree. For the reason stated by Boeing, we have determined that these airplanes should not be subject to this AD. However, we do not agree to revise the Applicability statement of this AD as suggested by

Boeing. Instead, we have revised the Applicability statement of this final rule to state, ''Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes, certificated in any category; as identified in Boeing Special Attention Service Bulletin 737–30–1056, Revision 1, dated October 25, 2007.'' We have confirmed that the effectivity of this service bulletin matches the applicability suggested by Boeing.

Request To Revise the Proposed Costs of Compliance

Air Transport Association (ATA), on behalf of its member American Airlines (AAL), states that the work-hour estimate of 9.75 hours per airplane provided in the service bulletin is more realistic than the 4-hour estimate provided in the NPRM.

From this comment, we infer that AAL is requesting that we revise the Costs of Compliance section of the NPRM to reflect 9.75 work-hours per airplane to do the proposed actions. We do not agree. The cost information below describes only the direct costs of the specific actions required by this AD. Based on the best data available, the manufacturer provided the number of work hours (4) necessary to do the required actions. This number represents the time necessary to perform only the actions actually required by this AD. We recognize that, in doing the actions required by an AD, operators might incur incidental costs in addition to the direct costs. The cost analysis in AD rulemaking actions, however, typically does not include incidental costs such as the time required to gain access and close up, time necessary for planning, or time necessitated by other administrative actions. Those incidental costs, which might vary significantly among operators, are almost impossible to calculate. We have made no change to this final rule in this regard.

Request To Include Parts Installation Requirement

ATA, on behalf of its member Delta Airlines (Delta), suggests that the AD specify that a composite drain mast cannot replace an aluminum drain mast unless the bonding jumper is installed according to Boeing Special Attention Service Bulletin 737–30–1056, Revision 1, dated October 25, 2007. Delta asserts that, according to the airplane illustrated parts catalog, the composite and aluminum drain masts are interchangeable, which could lead to unintentional non-compliance with the AD.

We agree that the composite and aluminum drain mast can be interchangeable. Therefore, for the reasons given by Delta, we have added a new paragraph (i), ''Parts Installation,'' to this final rule to prohibit installation of a composite gray water drain mast, unless a bonding jumper is also installed, as specified in paragraph (g) of this final rule.

Additional Changes to This Final Rule

We have also updated the Costs of Compliance section of this final rule to reflect the current number of U.S.-registered airplanes, and the cost of parts necessary to accomplish the required actions.

Costs of Compliance

There are about 1,906 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	Number of U.S.-registered airplanes	Fleet cost
Inspection to determine gray water drain mast material.	1	$80	None	$80	873	$69,840.
Installation of bonding jumper.	Between 2 and 4 (depending on airplane configuration).	80	Between $8 and $16, depending on kit.	Between $168 and $336.	Up to 873	Between $146,664 and $293,328.

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:

2008–08–22 Boeing: Amendment 39–15476. Docket No. FAA–2007–29116; Directorate Identifier 2007–NM–064–AD.

Effective Date

(a) This airworthiness directive (AD) is effective May 27, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes, certificated in any category; as identified in Boeing Special Attention Service Bulletin 737–30–1056, Revision 1, dated October 25, 2007.

Unsafe Condition

(d) This AD results from a report of charred insulation blankets and burned wires around the forward gray water composite drain mast found during an inspection of the forward cargo compartment on a Model 767–300F airplane. We are issuing this AD to prevent a fire near a composite drain mast and possible disruption of the electrical power system caused by a lightning strike on a composite drain mast, which could result in the loss of several functions essential for safe flight.

Compliance

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

Inspection To Determine Material of Gray Water Drain Masts

(f) Within 60 months after the effective date of this AD, inspect the forward and aft gray water drain masts to determine whether the drain masts are made of aluminum or composite. A review of airplane maintenance records is acceptable in lieu of this inspection if the material of the forward and aft gray water drain masts can be conclusively determined from that review.

(1) For any aluminum gray water drain mast identified during the inspection or records check required by paragraph (f) of this AD, no further action is required by this paragraph for that drain mast only.

(2) For any composite gray water drain mast identified during the inspection or records check required by paragraph (f) of this AD, do the actions specified in paragraph (g) of this AD.

Installation of Bonding Jumper

(g) For any composite gray water drain mast identified during the inspection or records check required by paragraph (f) of this AD: Within 60 months after the effective date of this AD, install a bonding jumper between a ground and the clamp on the tube of the gray water composite drain mast, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–30–1056, Revision 1, dated October 25, 2007.

Actions Done Previously Using Previous Service Information

(h) Actions done before the effective date of this AD according to Boeing Special Attention Service Bulletin 737–30–1056, dated February 28, 2007, are considered acceptable for compliance with the corresponding actions specified in this AD provided the results of the resistance measurements meet the acceptable values specified in Boeing Special Attention Service Bulletin 737–30–1056, Revision 1, dated October 25, 2007.

Parts Installation

(i) As of the effective date of this AD, no person may install, on any airplane, a composite gray water drain mast, unless a bonding jumper is also installed, as specified in paragraph (g) of this AD.

Alternative Methods of Compliance (AMOCs)

(j)(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

(k) You must use Boeing Special Attention Service Bulletin 737–30–1056, Revision 1, dated October 25, 2007, 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 April 7, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–8254 Filed 4–18–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0120; Directorate Identifier 2007–NM–327–AD; Amendment 39–15473; AD 2008–08–19]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Aerospace LP Model Gulfstream G150 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:

Possible chafing between [the] electrical feeder cable connected to contactor 123P/2 and ground point 803GND, installed within the left DC power box, discovered during routine receiving inspection. This condition may exist on boxes installed on in-service aircraft. If this chafing condition is left unattended, an electrical short may develop, leading to disconnection of the battery and battery bus from the electrical system of the aircraft, [which could result in] overheating, arcing, smoke and fire.

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

DATES: This AD becomes effective May 27, 2008.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of May 27, 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: Mike Borfitz, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2677; 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 February 5, 2008 (73 FR 6627). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

Possible chafing between [the] electrical feeder cable connected to contactor 123P/2 and ground point 803GND, installed within the left DC power box, discovered during routine receiving inspection. This condition may exist on boxes installed on in-service aircraft. If this chafing condition is left unattended, an electrical short may develop, leading to disconnection of the battery and battery bus from the electrical system of the aircraft, [which could result in] overheating, arcing, smoke and fire.

The corrective action includes inspecting for chafing and arcing damage of the feeder cable, terminal lug and ground point, contacting Gulfstream for repair if any damage is found and repairing, installing new heat-shrink tubing if the tubing is missing or damaged, and repositioning the feeder cable. 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 received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

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 about 26 products of U.S. registry. We also estimate that it will take about 3 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Required parts will cost about $0 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $6,240, or $240 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:

2008–08–19 Gulfstream Aerospace LP (Formerly Israel Aircraft Industries, Ltd.): Amendment 39–15473. Docket No. FAA–2008–0120; Directorate Identifier 2007–NM–327–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective May 27, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Gulfstream Model Gulfstream G150 airplanes, certificated in any category, serial numbers 201 through 239 inclusive.

Subject

(d) Air Transport Association (ATA) of America Code 24: Electrical power.

Reason

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

Possible chafing between [the] electrical feeder cable connected to contactor 123P/2 and ground point 803GND, installed within the left DC power box, discovered during routine receiving inspection. This condition may exist on boxes installed on in-service aircraft. If this chafing condition is left unattended, an electrical short may develop, leading to disconnection of the battery and battery bus from the electrical system of the

aircraft, [which could result in] overheating, arcing, smoke and fire.

The corrective action includes inspecting for chafing and arcing damage of the feeder cable, terminal lug and ground point, contacting Gulfstream for repair if any damage is found and repairing, installing new heat-shrink tubing if the tubing is missing or damaged, and repositioning the feeder cable.

Actions and Compliance

(f) Unless already done, do the following actions. Within 50 flight hours or 30 days after the effective date of this AD, whichever occurs first, inspect the feeder cable, terminal lug 123P/2, and ground point 803GND for chafing and arcing damage, reposition the feeder cable to maintain an adequate gap, and do all applicable corrective actions. Do the actions in accordance with Gulfstream Alert Service Bulletin 150–24A–046, dated October 31, 2007. Do all applicable corrective actions before further flight.

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, International Branch, ANM–116, Transport Airplane Directorate, 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: Mike Borfitz, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–2677; 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 Israeli Airworthiness Directive 24–07–10–11, dated October 31, 2007; and Gulfstream Alert Service Bulletin 150–24A–046, dated October 31, 2007; for related information.

Material Incorporated by Reference

(i) You must use Gulfstream Alert Service Bulletin 150–24A–046, dated October 31, 2007, 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 Gulfstream Aerospace Corporation, P.O. Box 2206, Mail Station D–25, Savannah, Georgia 31402–2206.

(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*.

Issued in Renton, Washington, on April 8, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–8258 Filed 4–18–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0119; Directorate Identifier 2007–NM–304–AD; Amendment 39–15475; AD 2008–08–21]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model ERJ 170 Airplanes and Model ERJ 190 Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD), which applies to all EMBRAER Model ERJ 170–100 LR, –100 SE, –100 STD, and –100 SU airplanes; and Model ERJ 190–100 IGW, –100 LR, and –100 STD airplanes. That AD currently requires revising the Limitations section of the airplane flight manual (AFM) to prohibit the flightcrew from moving the throttle into the forward thrust range immediately after applying the thrust reverser. This new AD adds additional airplanes to the applicability and requires the AFM revision for those additional airplanes. For certain airplanes, this AD also requires installing new, improved full-authority digital engine-control (FADEC) software. This AD results from a report that, during landing, the thrust reverser may not re-stow completely if the throttle lever is moved into the forward thrust range immediately after the thrust reverser is applied. We are issuing this AD to prevent the flightcrew from performing a takeoff with a partially deployed thrust reverser, which could result in reduced controllability of the airplane.

DATES: This AD becomes effective May 27, 2008.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of May 27, 2008.

ADDRESSES: For service information identified in this AD, contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343–CEP 12.225, Sao Jose dos Campos–SP, Brazil.

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: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes AD 2006–11–15, amendment 39–14619 (71 FR 30577, May 30, 2006). The existing AD applies to all EMBRAER Model ERJ 170–100 LR, –100 SE, –100 STD, and –100 SU airplanes; and all Model ERJ 190–100 IGW, –100 LR, and –100 STD airplanes. That NPRM was published in the **Federal Register** on February 5, 2008 (73 FR 6631). That NPRM proposed to continue to require revising the Limitations section of the airplane flight manual (AFM) to prohibit the flightcrew from moving the throttle into the forward thrust range immediately after applying the thrust reverser. That NPRM also proposed to add additional airplanes to the applicability and require the AFM

revision for those additional airplanes. For certain airplanes, that NPRM also proposed to require installing new, improved full-authority digital engine-control software.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the single comment that has been received on the NPRM. The commenter, Air Line Pilots Association, International, supports the NPRM.

Conclusion

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

Costs of Compliance

The following table provides the estimated costs, at an average labor rate of $80 per hour, for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
AFM revision (required by AD 2006–11–15)	1	None	$80	76	$6,080
AFM revision (new action)	1	None	80	57	4,560
Software installation (new action)	1	The manufacturer states that it will supply the required software to operators at no cost	80	133	10,640

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 removing amendment 39–14619 (71 FR 30577, May 30, 2006) and by adding the following new airworthiness directive (AD):

2008–08–21 Empresa Brasileira de Aeronautica S.A. (EMBRAER): Amendment 39–15475. Docket No. FAA–2008–0119; Directorate Identifier 2007–NM–304–AD.

Effective Date

(a) This AD becomes effective May 27, 2008.

Affected ADs

(b) This AD supersedes AD 2006–11–15.

Applicability

(c) This AD applies to all EMBRAER Model ERJ 170–100 LR, –100 SE, –100 STD, –100 SU, –200 LR, –200 STD, and –200 SU airplanes; and Model ERJ 190–100 IGW, –100 LR, –100 STD, –200 IGW, –200 LR, and –200 STD airplanes; certificated in any category.

Unsafe Condition

(d) This AD results from a report that, during landing, the thrust reverser may not re-stow completely if the throttle lever is moved into the forward thrust range immediately after the thrust reverser is applied. We are issuing this AD to prevent the flightcrew from performing a takeoff with a partially deployed thrust reverser, which could result in reduced controllability 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 2006–11–15

Airplane Flight Manual (AFM) Revision

(f) For Model ERJ 170–100 LR, –100 SE, –100 STD, and –100 SU airplanes; and Model ERJ 190–100 IGW, –100 LR, –100 STD airplanes: Within 7 days after June 14, 2006 (the effective date of AD 2006–11–15), revise the Limitations section of the EMBRAER 170/190 AFM to include the following statement. This may be done by inserting a copy of this AD in the AFM. Factory-installation or installation of the applicable software required by paragraph (h) of this AD terminates the AFM revision required by this paragraph.

''After applying thrust reverser, do not move the throttle back to the forward thrust range, unless the REV icon on the EICAS is shown in amber or green.''

Note 1: When a statement identical to that in paragraph (f) of this AD has been included in the general revisions of the AFM, the general revisions may be inserted into the

AFM, and the copy of this AD may be removed from the AFM.

New Requirements of This AD

AFM Revision for New Airplanes

(g) For Model ERJ 170–200 LR, –200 STD, and –200 SU airplanes; and Model ERJ 190–200 IGW, –200 LR, and –200 STD airplanes: Within 14 days after the effective date of this AD, revise the Limitations section of the EMBRAER 170/190 AFM to include the following statement. This may be done by inserting a copy of this AD in the AFM. Factory-installation or installation of the applicable software required by paragraph (h) of this AD terminates the AFM revision required by this paragraph.

''After applying thrust reverser, do not move the throttle back to the forward thrust range, unless the REV icon on the EICAS is shown in amber or green.''

Note 2: When a statement identical to that in paragraph (g) of this AD has been included in the general revisions of the AFM, the general revisions may be inserted into the AFM, and the copy of this AD may be removed from the AFM.

Software Installation

(h) Within 1,200 flight hours after the effective date of this AD, install the full-authority digital engine-control (FADEC) software specified in paragraph (h)(1), (h)(2), or (h)(3) of this AD, as applicable. Installing the applicable software terminates the applicable AFM revision required by paragraph (f) or (g) of this AD.

(1) For Model ERJ 170–100 LR, –100 SE, –100 STD, –100 SU, –200 LR, –200 STD, and –200 SU airplanes identified in EMBRAER Service Bulletin 170–73–0003, Revision 01, dated September 4, 2006: Install engine FADEC software version 5.30 or higher in accordance with the service bulletin.

(2) For the Model ERJ 190–200 LR airplane identified in EMBRAER Service Bulletin 190–73–0005, dated November 9, 2006: Install engine FADEC software version 5.10 or higher in accordance with the service bulletin.

(3) For Model ERJ 190–100 IGW, –100 LR, –100 STD, –200 IGW, –200 LR, and –200 STD airplanes identified in EMBRAER Service Bulletin 190–73–0009, Revision 01, dated April 23, 2007: Install engine FADEC software version 5.20 or higher in accordance with the service bulletin.

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) Brazilian airworthiness directive 2006–03–02R1, effective February 27, 2007; and Brazilian airworthiness directive 2006–03–03R1, effective November 9, 2007; also address the subject of this AD.

Material Incorporated by Reference

(k) You must use the service information listed in Table 1 of this AD to perform the actions that are required by this AD, as applicable, 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 Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343–CEP 12.225, Sao Jose dos Campos–SP, Brazil, 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 1.—MATERIAL INCORPORATED BY REFERENCE

EMBRAER Service Bulletin	Revision level	Date
170–73–0003	01	September 4, 2006.
190–73–0005	Original	November 9, 2006.
190–73–0009	01	April 23, 2007.

Issued in Renton, Washington, on April 8, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–8255 Filed 4–18–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0117; Directorate Identifier 2007–NM–273–AD; Amendment 39–15472; AD 2008–08–18]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.28 Mark 0070 and Mark 0100 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:

[L]eakage of hot wing anti-icing air from the Peri-seal housing. This results in an uncontrolled flow of high-pressure hot air to enter the forward (anti-icing) plenum chamber of the wing leading edge, potentially damaging the anti-icing barrier webs. Subsequently, the wing auxiliary spar can also be damaged by high-pressure hot air. * * * [D]eterioration of the Peri-seals enables the piccolo tubes to vibrate, resulting in a broken piccolo tube. * * * This condition, if not corrected, may cause heat damage to the front spar that potentially affects the wing's load capability.

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

DATES: This AD becomes effective May 27, 2008.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of May 27, 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: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; 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 February 5, 2008 (73 FR 6629). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

In 1997, Fokker introduced a new type of Peri-seal (SBF100–30–022). The old type was known to be subject to deterioration, which, in combination with improper installation, can cause leakage of hot wing anti-icing air from the Peri-seal housing. This results in an uncontrolled flow of high-pressure hot air to enter the forward (anti-icing) plenum chamber of the wing leading edge, potentially damaging the anti-icing barrier webs. Subsequently, the wing auxiliary spar can also be damaged by high-pressure hot air. Analysis at the time showed that any resulting damage (known to occur at inboard positions only) would not affect the wing load capability. For this reason, the modification was not classified as MANDATORY and no AD action was warranted. However, through a recent occurrence, it was discovered that deterioration of the Peri-seals enables the piccolo tubes to vibrate, resulting in a broken piccolo tube. In this case, the location of the failure was more outboard than previous occurrences. This condition, if not corrected, may cause heat damage to the front spar that potentially affects the wing's load capability. Since an unsafe condition was identified, likely to exist or develop on an aircraft of this type design, CAA (Civil Aviation Authority) Netherlands issued AD NL–2006–011 to require inspection of the Piccolo Tubes and the surrounding structure to establish correct installation, as well as the replacement of the 460-series Peri-seals by the improved 600-series, which have a higher temperature limit.

Since the issuance of that AD, Fokker has developed a modification, published as Component Service Bulletin (CSB) D14000–57–007, for spare wing leading edge sections that may still contain the 460-series Peri-seals. For that reason, this EASA AD retains the requirements of AD NL–2006–011 and adds a limit for the allowed use of unmodified wing leading edge section as replacement part.

The corrective actions include inspection of the piccolo tubes and the wing leading edge for damage, and replacement of the Peri-seals, or repair of damage, as applicable. 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 received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

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 about 9 products of U.S. registry. We also estimate that it will take about 48 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Required parts will cost about $3,430 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $65,430, or $7,270 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:

2008–08–18 Fokker Services B.V.: Amendment 39–15472. Docket No. FAA–2008–0117; Directorate Identifier 2007–NM–273–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective May 27, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Fokker Model F.28 Mark 0070 and Mark 0100 airplanes, certificated in any category, all serial numbers, except those previously modified in accordance with Fokker Service Bulletin SBF100–30–022.

Subject

(d) Air Transport Association (ATA) of America Code 30: Ice and Rain Protection.

Reason

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

In 1997, Fokker introduced a new type of Peri-seal (SBF100–30–022). The old type was known to be subject to deterioration, which, in combination with improper installation, can cause leakage of hot wing anti-icing air from the Peri-seal housing. This results in an uncontrolled flow of high-pressure hot air to enter the forward (anti-icing) plenum chamber of the wing leading edge, potentially damaging the anti-icing barrier webs. Subsequently, the wing auxiliary spar can also be damaged by high-pressure hot air. Analysis at the time showed that any resulting damage (known to occur at inboard positions only) would not affect the wing load capability. For this reason, the modification was not classified as MANDATORY and no AD action was warranted. However, through a recent occurrence, it was discovered that deterioration of the Peri-seals enables the piccolo tubes to vibrate, resulting in a broken piccolo tube. In this case, the location of the failure was more outboard than previous occurrences. This condition, if not corrected, may cause heat damage to the front spar that potentially affects the wing's load capability. Since an unsafe condition was identified, likely to exist or develop on an aircraft of this type design, CAA (Civil Aviation Authority) Netherlands issued AD NL–2006–011 to require inspection of the Piccolo Tubes and the surrounding structure to establish correct installation, as well as the replacement of the 460-series Peri-seals by the improved 600-series, which have a higher temperature limit.

Since the issuance of that AD, Fokker has developed a modification, published as Component Service Bulletin (CSB) D14000–57–007, for spare wing leading edge sections that may still contain the 460-series Peri-seals. For that reason, this EASA AD retains the requirements of AD NL–2006–011 and adds a limit for the allowed use of unmodified wing leading edge section as replacement part.

The corrective actions include inspection of the piccolo tubes and the wing leading edge for damage, and replacement of the Peri-seals, or repair of damage, as applicable.

Actions and Compliance

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

(1) Within 4,000 flight hours or 12 months after the effective date of this AD, whichever occurs first, do the actions in paragraphs (f)(1)(i) and (f)(1)(ii) of this AD in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–30–028, Revision 1, dated April 17, 2007.

(i) Inspect for damage of the piccolo tubes and the wing leading edge on the outside and on the inside at the access panels. If any damage is found that is beyond the limits specified in the service bulletin, repair before further flight.

(ii) Replace the 460-series Peri-seals in the riblets with improved 600-series Peri-seals.

(2) As of 12 months after the effective date of this AD, no person may install on any airplane a spare wing leading edge section unless the leading edge section has been modified in accordance with Fokker Component Service Bulletin D14000–57–007, dated April 17, 2007.

(3) Actions done before the effective date of this AD in accordance with Fokker Service Bulletin SBF100–30–028, dated May 18, 2006, are considered acceptable for compliance with the actions required by paragraph (f)(1) of this AD.

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, International Branch, ANM–116, Transport Airplane Directorate, 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: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; 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 European Aviation Safety Agency (EASA) Airworthiness Directive 2007–0229, dated August 15, 2007; Fokker Service Bulletin SBF100–30–028, Revision 1, dated April 17, 2007; and Fokker Component Service Bulletin D14000–57–007, dated April 17, 2007; for related information.

Material Incorporated by Reference

(i) You must use Fokker Service Bulletin SBF100–30–028, Revision 1, dated April 17, 2007, 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 Fokker Services B.V., Technical Services Dept., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands.

(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*.

Issued in Renton, Washington, on April 8, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–8256 Filed 4–18–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–29063; Directorate Identifier 2007–NM–049–AD; Amendment 39–15480; AD 2008–08–26]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Boeing Model 767 airplanes. This AD requires a one-time inspection to determine the material of the forward and aft gray water drain masts. For airplanes having composite gray water drain masts, this AD also requires installation of a ground bracket and a bonding jumper between a ground bracket and the clamp on the tube of the forward and aft gray water composite drain masts. This AD results from a report of charred insulation blankets and burned wires around the forward gray water composite drain mast found during an inspection of the forward cargo compartment. We are issuing this AD to prevent a fire near a composite drain mast and possible disruption of the electrical power system caused by a lightning strike on a composite drain

mast, which could result in the loss of several functions essential for safe flight.

DATES: This AD is effective May 27, 2008.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of May 27, 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: Nicholas Wilson, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6476; 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 767 airplanes. That NPRM was published in the **Federal Register** on August 31, 2007 (72 FR 50276). That NPRM proposed to require a one-time inspection to determine the material of the forward and aft gray water drain masts. For airplanes having composite gray water drain masts, that NPRM also proposed to require installation of a ground bracket and a bonding jumper between a ground bracket and the clamp on the tube of the forward and aft gray water composite drain masts.

Comments

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

Request To Remove Airplanes From the Applicability Statement of the Proposed AD

Boeing requests that we revise the applicability statement of the NPRM to remove certain airplanes. Boeing states that Model 767 airplanes beginning with line number 934 have a ground bracket and bonding jumper installed in production for both the forward and the aft composite gray water drain masts. Therefore, Boeing asserts that these airplanes should not be subject to this AD.

We partially agree. For the reason stated by Boeing, we have determined that these airplanes should not be subject to this AD. However, we do not agree to revise the Applicability statement of this AD as suggested by Boeing. Instead, we have revised the Applicability statement of this final rule to state, ''This AD applies to Boeing Model 767–200, –300, –300F, and –400ER series airplanes, certificated in any category; as identified in Boeing Special Attention Service Bulletin 767–30–0047, dated January 25, 2007; and Boeing Special Attention Service Bulletin 767–30–0048, dated January 25, 2007.'' We have confirmed that the effectivities of these service bulletins match the applicability suggested by Boeing.

Explanation of Changes Made to This AD

We have confirmed with the airplane manufacturer that the composite and aluminum drain mast can be interchangeable. Therefore, we have added a new paragraph (h), ''Parts Installation,'' to this final rule to prohibit installation of a composite gray water drain mast, unless a new ground bracket and bonding jumper are also installed, as specified in paragraph (g) of this AD. We have also re-identified subsequent paragraphs 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 changes described previously. We also determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

There are about 86 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	Number of U.S.-registered airplanes	Fleet cost
Inspection to determine gray water drain mast material.	1	$80	None	$80	41	$3,280.
Installation of bonding jumper.	4	80	Up to $654	Up to $974	Up to 41	Up to $39,934.

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:

2008–08–26 Boeing: Amendment 39–15480. Docket No. FAA–2007–29063; Directorate Identifier 2007–NM–049–AD.

Effective Date

(a) This airworthiness directive (AD) is effective May 27, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 767–200, –300, –300F, and –400ER series airplanes, certificated in any category; as identified in Boeing Special Attention Service Bulletin 767–30–0047, dated January 25, 2007; and Boeing Special Attention Service Bulletin 767–30–0048, dated January 25, 2007.

Unsafe Condition

(d) This AD results from a report of charred insulation blankets and burned wires around the forward gray water composite drain mast found during an inspection of the forward cargo compartment. We are issuing this AD to prevent a fire near a composite drain mast and possible disruption of the electrical power system caused by a lightning strike on a composite drain mast, which could result in the loss of several functions essential for safe flight.

Compliance

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

Inspection To Determine Material of Gray Water Drain Mast

(f) Within 60 months after the effective date of this AD, inspect the forward and aft gray water drain masts to determine whether the drain mast is made of aluminum or composite. A review of airplane maintenance records is acceptable in lieu of this inspection if the material of the forward and aft gray water drain masts can be conclusively determined from that review.

(1) For any aluminum gray water drain mast identified during the inspection or records check required by paragraph (f) of this AD, no further action is required by this AD for that drain mast only.

(2) For any composite gray water drain mast identified during the inspection or records check required by paragraph (f) of this AD, do the actions specified in paragraph (g) of this AD.

Installation of New Ground Bracket and Bonding Jumper

(g) For any composite gray water drain mast identified during the inspection or records check required by paragraph (f) of this AD: Within 60 months after the effective date of this AD, install a bonding jumper between the new ground bracket and the clamp on the tube of the gray water composite drain mast, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 767–30–0047, dated January 25, 2007 (for Model 767–200, –300, and –300F series airplanes); and Boeing Special Attention Service Bulletin 767–30–0048, dated January 25, 2007 (for Model 767–400ER series airplanes).

Parts Installation

(h) As of the effective date of this AD, no person may install, on any airplane, a composite gray water drain mast, unless a new ground bracket and bonding jumper are also installed, as specified in paragraph (g) of this AD.

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 Special Attention Service Bulletin 767–30–0047, dated January 25, 2007; or Boeing Special Attention Service Bulletin 767–30–0048, dated January 25, 2007; as applicable; 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 April 7, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–8317 Filed 4–18–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–29029; Directorate Identifier 2007–NM–175–AD; Amendment 39–15477; AD 2008–08–23]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–200C Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Boeing Model 737–200C series airplanes. This AD requires revising the FAA-approved maintenance inspection program to include inspections that will give no less than the required damage tolerance rating for each structural significant item (SSI), doing repetitive inspections to detect cracks of all SSIs, and repairing cracked structure. This AD results from a report of incidents involving fatigue cracking in transport category airplanes that are approaching or have exceeded their design service objective. We are issuing this AD to maintain the continued structural integrity of the entire fleet of Model 737–200C series airplanes.

DATES: This AD is effective May 27, 2008.

The Director of the Federal Register approved the incorporation by reference

of a certain publication listed in this AD as of May 27, 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: Nancy Marsh, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6440; 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 737–200C series airplanes. That NPRM was published in the **Federal Register** on August 23, 2007 (72 FR 48243). That NPRM proposed to require revising the FAA-approved maintenance inspection program to include inspections that will give no less than the required damage tolerance rating for each structural significant item (SSI), doing repetitive inspections to detect cracks of all SSIs, and repairing cracked structure.

Comments

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

Request To Allow Alternative Inspections for Previously Repaired/Altered Structure

Boeing requests that the NPRM be revised to include a provision for alternative inspections when a repair area prohibits operators from doing the inspections specified in paragraph (h) of the NPRM. Boeing requests that the initial alternative inspection be done within 12 months after the repair is discovered during the initial inspection required by paragraph (h). Boeing points out that a similar provision was provided in paragraph (e) of AD 98–11–04 R1, amendment 39–10984 (64 FR 987, January 7, 1999). Boeing states that including such a provision will assist operators.

We agree. We have added a new paragraph (i) to this AD (and reidentified subsequent paragraphs) that provides alternative inspections to those in paragraph (h) of this AD.

Request To Clarify Certain Sections of the Preamble of the NPRM

Boeing requests that certain sections in the preamble of the NPRM be clarified for the following reasons:

1. Boeing states that Advisory Circular (AC) No. 91–56, ''Supplemental Structural Inspection Program for Large Transport Category Airplanes,'' dated May 6, 2001, applies to airplanes certified under the fail-safe and fatigue requirements of Civil Air Regulations (CAR) 4b or part 25 of the Federal Aviation Regulations (14 CFR part 25), not damage tolerance structural requirements as stated in the ''Issuance of Advisory Circular (AC)'' section.

2. Boeing notes that the ''Other Relevant Rulemaking'' section identifies the strut as one of the affected SSIs for Model 737–100, –200, and –200C series airplanes. Boeing states that those airplanes do not have an engine strut.

3. Boeing states that Boeing Document D6–37089, ''Supplemental Structural Inspection Document for Model 737–100/200/200C Airplanes,'' Revision E, dated May 2007 (referred to in the NPRM as the appropriate source of service information for the required actions), does not describe procedures for repairing cracked structure, as specified in the ''Relevant Service Information'' section.

We agree with Boeing that the identified sections could be clarified. For the first two items we agree with Boeing's statements. On the third item, while the document does not specify individual repair procedures for each specific SSI, it does specify that all repairs must be approved. However, no change has been made to the final rule since the identified sections of the NPRM do not reappear in the final rule.

Explanation of Change to Reported Incidents

We have revised the AD to specify that this AD results from a report of incidents involving fatigue cracking only.

Explanation of Change to Costs of Compliance

The requirements for the baseline structure of Model 737–200C series airplanes are currently described in 14 CFR 121.1109(c)(1) and 129.109(b)(1), not in 14 CFR 121.370(a) and 129.16 as indicated in the third paragraph of the Cost of Compliance section of the NPRM. Therefore, we have revised the Costs of Compliance section of the AD accordingly.

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 changes described previously. We also determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

There are about 49 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	Cost	Number of U.S.-registered airplanes	Fleet cost
Revision of maintenance inspection program.	1,000, per operator (3 U.S. operators).	$80	$80,000 per operator	9	$240,000.
Inspections	500 per airplane	80	$40,000, per airplane, per inspection cycle.	9	$360,000, per inspection cycle.

The number of work hours, as indicated above, is presented as if the accomplishment of the actions in this AD is to be conducted as ''stand alone'' actions. However, in actual practice, these actions for the most part will be done coincidentally or in combination with normally scheduled airplane inspections and other maintenance program tasks. Therefore, the actual number of necessary additional work hours will be minimal in many instances. Additionally, any costs associated with special airplane scheduling will be minimal.

Further, compliance with this AD will be a means of compliance with the aging airplane safety final rule (AASFR) for the baseline structure of Model 737–200C series airplanes. The AASFR final rule requires certain operators to incorporate damage tolerance inspections into their maintenance inspection programs. These requirements are described in 14 CFR 121.1109(c)(1) and 129.109(b)(1). Accomplishment of the actions required by this AD will meet the requirements of these CFR sections for the baseline structure. The costs for accomplishing the inspection portion of this AD were accounted for in the regulatory evaluation of the AASFR final rule.

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:

2008–08–23 Boeing: Amendment 39–15477. Docket No. FAA–2007–29029; Directorate Identifier 2007–NM–175–AD.

Effective Date

(a) This airworthiness directive (AD) is effective May 27, 2008.

Affected ADs

(b) Accomplishing the actions required by paragraph (g) and the initial inspections required by paragraph (h) of this AD ends the requirements of AD 98–11–04 R1, amendment 39–10984, for Model 737–200C series airplanes only. Operators of Model 737–100 and –200 series airplanes must continue to do the actions required by AD 98–11–04 R1.

Applicability

(c) This AD applies to all Boeing Model 737–200C series airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from a report of incidents involving fatigue cracking in transport category airplanes that are approaching or have exceeded their design service objective. We are issuing this AD to maintain the continued structural integrity of the entire fleet of Model 737–200C series airplanes.

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 Information

(f) The term ''Revision E,'' as used in this AD, means Boeing Document D6–37089, ''Supplemental Structural Inspection Document for Model 737–100/200/200C Airplanes,'' Revision E, dated May 2007.

Revision of the FAA-Approved Maintenance Inspection Program

(g) At the applicable time specified in Table 1 of this AD, incorporate a revision into the FAA-approved maintenance inspection program that provides no less than the required damage tolerance rating (DTR) for each structural significant item (SSI) listed in Revision E. (The required DTR value for each SSI is listed in Revision E.) The revision to the maintenance inspection program must include and must be implemented in accordance with the procedures in Section 5.0, ''Damage Tolerance Rating (DTR) System Application,'' and Section 6.0, ''SSI Discrepancy Reporting'' of Revision E. Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD and has assigned OMB Control Number 2120–0056.

TABLE 1.—COMPLIANCE TIME FOR REVISING MAINTENANCE INSPECTION PROGRAM

For airplanes with SSIs—	Compliance time
(1) Affected by the cargo configuration.	Before the accumulation of 46,000 total flight cycles, or within 12 months after the effective date of this AD, whichever occurs later.
(2) Not affected by the cargo configuration.	Before the accumulation of 66,000 total flight cycles, or within 12 months after the effective date of this AD, whichever occurs later.

Initial and Repetitive Inspections

(h) Except as provided by paragraph (i) of this AD: At the applicable time specified in Table 2 of this AD, do the applicable initial inspections to detect cracks of all SSIs, in accordance with Revision E. Repeat the applicable inspections thereafter at the intervals specified in Section 3.0, ''Implementation'' of Revision E.

TABLE 2.—COMPLIANCE TIME FOR INITIAL INSPECTIONS

For airplanes with SSIs—	Compliance time
(1) Affected by the cargo configuration.	Before the accumulation of 46,000 total flight cycles, or within 4,000 flight cycles measured from 12 months after the effective date of this AD, whichever occurs later.
(2) Not affected by the cargo configuration.	Before the accumulation of 66,000 total flight cycles, or within 4,000 flight cycles measured from 12 months after the effective date of this AD, whichever occurs later.

(i) For any SSI that has been repaired or altered before the effective date of this AD such that the repair or design change affects your ability to accomplish the actions required by paragraph (h) of this AD: You must request FAA approval of an alternative method of compliance (AMOC) in accordance with section 39.17 of the Federal Aviation Regulations (14 CFR 39.17), at the initial compliance time specified in paragraph (h) of the AD; or do the actions specified in paragraphs (i)(1) and (i)(2) of this AD, at the times specified in those paragraphs, as an approved means of compliance with the requirements of paragraph (h) of this AD.

(1) At the initial compliance time specified in paragraph (h) of the AD, identify each repair or design change to that SSI.

(2) Within 12 months after the identification of a repair or design change required by paragraph (i)(1) of this AD, assess the damage tolerance characteristics of each SSI affected by each repair or design change to determine the effectiveness of the applicable SSID inspection for that SSI and if not effective, incorporate a revision into the FAA-approved maintenance inspection program to include a damage-tolerance based alternative inspection program for each affected SSI. Thereafter, inspect the affected structure in accordance with the alternative inspection program. The inspection method and compliance times (*i.e.*, threshold and repeat intervals) of the alternative inspection program must be approved in accordance with the procedures specified in paragraph (l) of this AD.

Repair

(j) If any cracked structure is found during any inspection required by paragraph (h) or (i) of this AD, before further flight, repair the cracked structure using a method approved in accordance with the procedures specified in paragraph (l) of this AD.

Inspection Program for Transferred Airplanes

(k) Before any airplane that is subject to this AD and that has exceeded the applicable compliance times specified in paragraph (h) of this AD can be added to an air carrier's operations specifications, a program for the accomplishment of the inspections required by this AD must be established in accordance with paragraph (k)(1) or (k)(2) of this AD, as applicable.

(1) For airplanes that have been inspected in accordance with this AD: The inspection of each SSI must be done by the new operator in accordance with the previous operator's schedule and inspection method, or the new operator's schedule and inspection method, at whichever time would result in the earlier accomplishment for that SSI inspection. The compliance time for accomplishment of this inspection must be measured from the last inspection accomplished by the previous operator. After each inspection has been done once, each subsequent inspection must be performed in accordance with the new operator's schedule and inspection method.

(2) For airplanes that have not been inspected in accordance with this AD: The inspection of each SSI required by this AD must be done either before adding the airplane to the air carrier's operations specification, or in accordance with a schedule and an inspection method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. After each inspection has been done once, each subsequent inspection must be done in accordance with the new operator's schedule.

Alternative Methods of Compliance (AMOCs)

(l)(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.

(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 approval must specifically refer to this AD.

Material Incorporated by Reference

(m) You must use Boeing Document D6–37089, ''Supplemental Structural Inspection Document for Model 737–100/200/200C Airplanes,'' Revision E, dated May 2007, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The document contains the following errors:

(i) Pages 2.0.3 and 2.0.4, Revision D, of Section 2.0 and pages F–14.5, Revision D, and F–14.6, Revision Blank, of Section 8.2 exist; but are not specified in the List of Effective Pages.

(ii) Pages 7.0.43 through 7.0.46 inclusive of Section 7.0 and pages W.34.1 and W.34.2 of Section 11.1, as specified in the List of Effective Pages, do not exist.

(iii) The List of Effective Pages specifies incorrect revision levels for certain pages; the revision levels specified on each page are correct.

(iv) None of the pages are dated. The issue date for each revision is specified in the Revision Highlights section.

(2) 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.

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

(4) 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 April 8, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–8320 Filed 4–18–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–26726; Directorate Identifier 2006–NM–205–AD; Amendment 39–15479; AD 2008–08–25]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–400F and –400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Boeing Model 747–400F and –400 series airplanes. This AD requires installing drains and drain tubes to eliminate water accumulation in the dripshield above the M826 Card File in the main equipment center. This AD results from a report that water from the dripshield entered the card file and damaged a circuit card, causing the AFT CARGO FIRE MSG message to be illuminated and resulting in an air turn back. We are issuing this AD to prevent water from entering the card file and damaging a circuit card. Failure of one or more of the 15 fuel system circuit cards in the card file could cause loss of fuel management, which could cause unavailability of fuel. Failure of one or more of the 35 fire detection circuit cards could cause a false message of a fire, or no message of a fire when there is a fire.

DATES: This AD is effective May 27, 2008.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of May 27, 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: Marcia Smith, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6484; 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 certain Boeing Model 747–400F series airplanes. That NPRM was published in the **Federal Register** on January 8, 2007 (72 FR 664). That NPRM proposed to require installing drains and drain tubes to eliminate water accumulation in the dripshield above the M826 Card File in the main equipment center.

Comments

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

Request To Revise the Applicability Language and To Add New Service Information

Boeing requests that all occurrences of the phrase ''certain 747–400F series airplanes'' be changed to ''certain 747–400F and certain 747–400BCF series airplanes.'' Boeing states that this change will clarify the affected models for operators, and that the wording of the proposed applicability statement, ''747–400F series,'' does not include the Model 747–400BCF (Boeing converted freighter) airplanes. Boeing states that it is revising the existing service bulletin referred to in the NPRM to include some early Model 747–400BCF airplanes.

We partially agree. We have determined that these airplanes are also subject to the identified unsafe condition addressed by this AD. Therefore, we agree to revise the applicability language of this AD to include these airplanes; however, we do not agree to use the language suggested by Boeing. Section XIII., ''747–400SF Major Design Change,'' of the type certificate data sheet for Boeing Model 747 airplanes states that the Model 747–400SF (special freighter), optionally known as Model 747–400BCF, remains as Model 747–400 series airplanes for documentation purposes and with regard to the applicability of ADs. Therefore, we have revised the applicability language in the preamble of this final rule to specify ''certain Boeing Model 747–400F and 747–400 series airplanes.'' However, none of the airplanes added to the applicability statement of this AD are on the U.S. Register, therefore additional notice and opportunity for public comment before issuing this AD are unnecessary. We have also revised the applicability statement of this final rule to refer to Boeing Alert Service Bulletin 747–25A3526, dated November 13, 2007 (described below), for Model 747–400 series airplanes.

Since we issued the NPRM, Boeing has issued Alert Service Bulletin 747–25A3526 to address the identified unsafe condition on certain Model 747–400 series airplanes. This service bulletin includes procedures that are essentially the same as those described in Boeing Alert Service Bulletin 747–25A3370, Revision 1, dated April 27, 2006 (referred to in the NPRM as the appropriate source of service information for doing the proposed actions for Model 747–400F airplanes), except that it also includes moving the P402 panel. As we stated previously, we have added Boeing Alert Service Bulletin 747–25A3526 to this final rule.

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 changes described previously. We also determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Change to Costs of Compliance Section of the NPRM

We have revised this final rule to update the number of airplanes (representing the 747–400 series airplanes) in the worldwide fleet. None of the airplanes added to the applicability statement of this AD are on the U.S. Register, so the figures in the estimated costs table remain unchanged.

Costs of Compliance

There are about 130 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	Number of U.S.-registered airplanes	Fleet cost
Installation	8	$80	$822	$1,462	21	$30,702

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:

2008–08–25 Boeing: Amendment 39–15479. Docket No. FAA–2006–26726; Directorate Identifier 2006–NM–205–AD.

Effective Date

(a) This airworthiness directive (AD) is effective May 27, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 747–400F airplanes as identified in Boeing Alert Service Bulletin 747–25A3370, Revision 1, dated April 27, 2006; and Model 747–400 series airplanes as identified in Boeing Alert Service Bulletin 747–25A3526, dated November 13, 2007; certificated in any category.

Unsafe Condition

(d) This AD results from a report that water from the dripshield entered the card file and damaged a circuit card, causing the AFT CARGO FIRE MSG message to be illuminated and resulting in an air turn back. We are issuing this AD to prevent water from entering the card file and damaging a circuit card. Failure of one or more of the 15 fuel system circuit cards in the card file could cause loss of fuel management, which could cause unavailability of fuel. Failure of one or more of the 35 fire detection circuit cards could cause a false message of a fire, or no message of a fire when there is a fire.

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.

Installation

(f) Within 24 months after the effective date of this AD, install two drains and drain tubes in the dripshield above the M826 Card File over the nose wheel left side in the main equipment center at station 400, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–25A3370, Revision 1, dated April 27, 2006 (for Model 747–400F series airplanes); or Boeing Alert Service Bulletin 747–25A3526, dated November 13, 2007 (for Model 747–400 series airplanes).

Installation According to Previous Issue of Service Bulletin

(g) Installing the drains and drain tubes is also acceptable for compliance with the requirements of paragraph (f) of this AD if done before the effective date of this AD in accordance with Boeing Alert Service Bulletin 747–25A3370, dated September 8, 2005.

Alternative Methods of Compliance (AMOCs)

(h)(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) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Material Incorporated by Reference

(i) You must use Boeing Alert Service Bulletin 747–25A3370, Revision 1, dated April 27, 2006; or Boeing Alert Service Bulletin 747–25A3526, dated November 13, 2007; as applicable; 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 April 7, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–8327 Filed 4–18–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–0049; Directorate Identifier 2007–NM–168–AD; Amendment 39–15478; AD 2008–08–24]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–600, –700, –700C, –800, and –900 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes. This AD requires replacing the drain tube assemblies and support clamps on the aft fairing of the engine struts. This AD results from reports of failure of the drain tube assembly and clamp on the aft fairings of an engine strut. We are issuing this AD to prevent failure of the

drain tube assemblies and clamps on the aft fairings of the of the engine struts. Such a failure could allow leaked flammable fluids in the drain systems to discharge on to the heat shields of the aft fairings of the engine struts, which could result in an undetected and uncontrollable fire.

DATES: This AD is effective May 27, 2008.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of May 27, 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: Samuel Spitzer, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6510; 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 certain Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes. That NPRM was published in the **Federal Register** on October 17, 2007 (72 FR 58773). That NPRM proposed to require replacing the drain tube assemblies and support clamps on the aft fairings of the engine struts.

Comments

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

Support for the NPRM

Boeing supports the NPRM.

Request for Revision of Compliance Time

The Air Transport Association (ATA), on behalf of a member, American Airlines, requests that the compliance time specified in paragraph (f) of the NPRM be revised from 60 to 72 months. The ATA states that the operators' routine maintenance schedules may not allow for accomplishment of the proposed replacement on affected aircraft within the proposed compliance time, and thus operators would incur additional costs associated with special scheduling.

We do not agree with the commenter's request to extend the compliance time. In developing an appropriate compliance time for this action, we considered the urgency associated with the subject unsafe condition, the availability of required parts, and the practical aspect of accomplishing the required replacement within a period of time that corresponds to the normal scheduled maintenance for most affected operators. However, according to the provisions of paragraph (g) of the final rule, we may approve requests to adjust the compliance time if the request includes data that prove that the new compliance time would provide an acceptable level of safety.

Request To Change the Work Hours of the ''Costs of Compliance'' Section

The ATA also requests that the work hours specified in the ''Costs of Compliance'' section of the NPRM be changed from 4 to 10.5 work hours. The ATA states that Boeing Special Attention Service Bulletin 737–54–1043, dated May 2, 2007 (referred to as the appropriate source of service information for accomplishing the proposed actions in the NPRM), includes 7 work hours for open and close access. The ATA states that such a change will provide a better representation of the time included in the service bulletin.

We do not agree with the ATA's request to increase the work hours specified in the ''Costs of Compliance'' section of the NPRM. That section describes only the direct costs of the specific actions required by this AD. Based on the best data available, the manufacturer provided the number of work hours (four) necessary to do the required actions. This number represents the time necessary to perform only the actions actually required by this AD. We recognize that, in doing the actions required by an AD, operators might incur incidental costs in addition to the direct costs. The cost analysis in AD rulemaking actions, however, typically does not include incidental costs such as the time required to gain access and close up, time necessary for planning, or time necessitated by other administrative actions. Those incidental costs, which might vary significantly among operators, are almost impossible to calculate. Therefore, we have made no change to the AD in this regard.

Clarification of Replacement

For clarification purposes, we have revised paragraph (f) from: ''Within 60 months after the effective date of this AD, remove the drain tube assemblies and support clamps on the aft fairing of the struts of engine number 1 and engine number 2. These are to be replaced with new drain tube assemblies and clamps * * *'' to: ''Within 60 months after the effective date of this AD, replace the drain tube assemblies and support clamps on the aft fairing of the struts of engine number 1 and engine number 2 with new drain tube assemblies and clamps * * *'' to provide consistency of terminology.

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 2,058 airplanes of the affected design in the worldwide fleet. This AD affects about 721 airplanes of U.S. registry. The actions take about 4 work hours per airplane, at an average labor rate of $80 per work hour. Required parts cost about $2,351 per airplane. Based on these figures, the estimated cost of this AD for U.S. operators is $1,925,791, or $2,671 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:

2008–08–24 Boeing: Amendment 39–15478. Docket No. FAA–2007–0049; Directorate Identifier 2007–NM–168–AD.

Effective Date

(a) This airworthiness directive (AD) is effective May 27, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes, certificated in any category; as identified in Boeing Special Attention Service Bulletin 737–54–1043, dated May 2, 2007.

Unsafe Condition

(d) This AD results from reports of failure of the drain tube assembly and support clamp on the aft fairing of an engine strut. We are issuing this AD to prevent failure of the drain tube assemblies and clamps on the aft fairings of the engine struts. Such a failure could allow leaked flammable fluids in the drain systems to discharge on to the heat shields of the aft fairings of the engine struts, which could result in an undetected and uncontrollable fire.

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.

Replacement

(f) Within 60 months after the effective date of this AD, replace the drain tube assemblies and support clamps on the aft fairing of the struts of engine number 1 and engine number 2 with new drain tube assemblies and clamps, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–54–1043, dated May 2, 2007.

Alternative Methods of Compliance (AMOCs)

(g)(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

(h) You must use Boeing Special Attention Service Bulletin 737–54–1043, dated May 2, 2007, 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 April 8, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–8328 Filed 4–18–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0196; Directorate Identifier 2008–CE–002–AD; Amendment 39–15482; AD 2008–09–02]

RIN 2120–AA64

Airworthiness Directives; APEX Aircraft Model CAP 10B Airplanes

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

ACTION: Final rule.

SUMMARY: We are superseding an existing airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) issued 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:

Further to a new fracture in flight of a CAP 10B wing in June 2003, the investigation in process seems to point out that a wrong application of CAP 10B Service Bulletin No. 16 (CAP 10B–57–004) would lead to the impossibility of detecting the potential spar damage while performing the Type Certificate holder upper spar flange inspection.

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

DATES: This AD becomes effective May 27, 2008.

On May 27, 2008, the Director of the Federal Register approved the incorporation by reference of APEX Aircraft Document No. 1000913GB, dated February 4, 2002; APEX Aircraft Document No. 1000914GB, dated February 4, 2002; and APEX Aircraft Document No. 1000915GB, dated February 4, 2002, listed in this AD.

As of July 23, 1993 (58 FR 31342, June 2, 1993), the Director of the Federal Register approved the incorporation by reference of Avions Mudry & CIE Service Bulletin CAP 10B No. 16, dated April 27, 1992, listed in this AD.

ADDRESSES: You may examine the AD docket on the Internet at *http://*

www.regulations.gov or in person at 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: 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:

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 February 25, 2008 (73 FR 9968) and proposed to supersede AD 2003–04–02, Amendment 39–13050 (68 FR 7904, February 19, 2003). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> Further to a new fracture in flight of a CAP 10B wing in June 2003, the investigation in process seems to point out that a wrong application of CAP 10B Service Bulletin No. 16 (CAP 10B–57–004) would lead to the impossibility of detecting the potential spar damage while performing the Type Certificate holder upper spar flange inspection.

The MCAI requires you to check that the No. 1 wing rib has been modified, comply with load factors and operating limitations, and do repetitive inspections of the upper and lower spar flanges and landing gear attachment blocks.

Comments

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

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

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 FAA policies. Any such differences are highlighted in a **Note** within the AD.

Costs of Compliance

Based on the service information, we estimate that this AD will affect 31 products of U.S. registry. We also estimate that it will take about 20 work-hours per product to comply with basic requirements of this AD. The average labor rate is $80 per work-hour.

Based on these figures, we estimate the cost of this AD to the U.S. operators to be $49,600 or $1,600 per product.

The estimated total cost on U.S. operators includes the cumulative costs associated with those airplanes affected by AD 2003–04–02 and those costs associated with the new actions that would be added in this AD.

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 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 Management Facility 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 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 removing Amendment 39–13050 (68 FR 7904, February 19, 2003) and adding the following new AD:

2008–09–02 APEX Aircraft: Amendment 39–15482; Docket No. FAA–2008–0196; Directorate Identifier 2008–CE–002–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective May 27, 2008.

Affected ADs

(b) This AD supersedes AD 2003–04–02, Amendment 39–13050.

Applicability

(c) This AD applies to Model CAP 10B airplanes, serial numbers (SNs) 01, 02, 03, 04, and 1 through 282, certificated in any category, that have not been fitted with a replacement wood/carbon wing following application of major change 000302.

Subject

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

Reason

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

Further to a new fracture in flight of a CAP 10B wing in June 2003, the investigation in process seems to point out that a wrong application of CAP 10B Service Bulletin No. 16 (CAP 10B–57–004) would lead to the impossibility of detecting the potential spar damage while performing the Type Certificate holder upper spar flange inspection.

The MCAI requires you to check that the No. 1 wing rib has been modified, comply with load factors and operating limitations, and do repetitive inspections of the upper and lower spar flanges and landing gear attachment blocks.

Actions and Compliance

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

(1) For Model CAP 10B airplanes with SNs 01, 02, 03, 04, and 1 through 263, within the next 100 hours time-in-service (TIS) after July 23, 1993 (the compliance date retained from AD 2003–04–02), unless already done, install a permanent inspection opening in the No. 1 wing rib following Avions Mudry Service Bulletin CAP10B No. 16, dated April 27, 1992. Inspection openings are incorporated during production for airplanes having a serial number of 264 or higher.

(2) For all affected airplanes, initially inspect the upper wing spar cap, the main wing spar undersurface, and the landing gear attachment blocks for cracks within the next 55 hours TIS after April 4, 2003 (the compliance date retained from AD 2003–04–02) following APEX Aircraft Document No. 1000913GB, dated February 4, 2002; APEX Aircraft Document No. 1000914GB, dated February 4, 2002; and APEX Aircraft Document No. 1000915GB, dated February 4, 2002. Repetitively inspect the upper wing spar cap and the main wing spar undersurface thereafter at intervals not to exceed 55 hours TIS. Repetitively inspect the landing gear attachment blocks thereafter at intervals not to exceed 1,000 hours TIS.

(3) For all affected airplanes, before further flight if any cracks are found during any inspection required in paragraph (f)(2) of this AD, do the following:

(i) Obtain a repair scheme from the manufacturer through the FAA at the address specified in paragraph (h)(1) of this AD;

(ii) Incorporate this repair scheme; and

(iii) Continue to inspect as specified in paragraph (f)(2) of this AD.

(4) For all affected airplanes, unless already done, do the following actions:

(i) Load factors limitation: Before further flight, as of May 27, 2008 (the effective date of this AD), the load factors limitation for solo flight is +5 and −3.5 Gs and when 2 persons are on board is +4.3 and −3.5 Gs.

(ii) Flick (snap roll) maneuvers speed limitation: Before further flight, as of May 27, 2008 (the effective date of this AD), for positive and negative flick maneuvers, the airspeed limitation is 160 km/hour (86 knots).

(5) For all affected airplanes, before further flight after May 27, 2008 (the effective date of this AD), fabricate a placard:

(i) Incorporate the following words (using at least ⅛-inch letters) in the placard and install this placard on the instrument panel within the pilot's clear view: ''THE NEVER EXCEED AIRSPEED FOR POSITIVE OR NEGATIVE FLICK MANEUVERS IS 160 KM/H (86 KNOTS). THE LOAD FACTORS LIMITATION FOR SOLO FLIGHT IS +5 AND −3.5 Gs AND WHEN 2 PERSONS ARE ON BOARD IS +4.3 AND −3.5 Gs.''

(ii) The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may fabricate the placard required in paragraph (g)(3)(i) of this AD. Make an entry into the aircraft records showing compliance with this portion of the AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: This AD does not include the requirement from the MCAI to route the request to operate beyond the load factors limitation and flick (snap roll) maneuvers speed limitation through the Direction Générale de L'Aviation Civile (DGAC). You may make this request to the FAA following paragraph (h)(1) of this AD.

Other FAA AD Provisions

(h) 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

(i) Refer to MCAI French AD 2003–375(A), dated October 1, 2003; Avions Mudry & CIE Service Bulletin CAP 10B No. 16, dated April 27, 1992, APEX Aircraft Document No. 1000913GB, dated February 4, 2002; APEX Aircraft Document No. 1000914GB, dated February 4, 2002; and APEX Aircraft Document No. 1000915GB, dated February 4, 2002, for related information.

Material Incorporated by Reference

(j) You must use Avions Mudry & CIE Service Bulletin CAP 10B No. 16, dated April 27, 1992; APEX Aircraft Document No. 1000913GB, dated February 4, 2002; APEX Aircraft Document No. 1000914GB, dated February 4, 2002; and APEX Aircraft Document No. 1000915GB, dated February 4, 2002, 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 APEX Aircraft Document No. 1000913GB, dated February 4, 2002; APEX Aircraft Document No. 1000914GB, dated February 4, 2002; and APEX Aircraft Document No. 1000915GB, dated February 4, 2002, under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) On July 23, 1993 (58 FR 31342, June 2, 1993), the Director of the Federal Register previously approved the incorporation by reference of Avions Mudry & CIE Service Bulletin CAP 10B No. 16, dated April 27, 1992.

(3) For service information identified in this AD, contact APEX Aircraft, Bureau de Navigabilité, 1, route de Troyes, 21121 DAROIS—France; telephone: +33 380 35 65 10; fax +33 380 35 65 15; e-mail: *airworthiness@apex-aircraft.com*; Internet: *http://www.apex-aircraft.com*.

(4) You may review copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, 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/cfr/ibr-locations.html*.

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

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–8360 Filed 4–18–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2008–0257; Airspace Docket No. 08–AAL–7]

RIN 2120–AA66

Revision of Restricted Area 2204; Oliktok Point, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action changes the using agency of Restricted Area 2204 (R–2204), Oliktok Point, AK, from ''Department of Energy, Sandia National Labs/National Nuclear Security Administration, Albuquerque, NM'' to ''Department of Energy, Office of

Science, Washington, DC.'' The FAA is taking this action in response to a request from the United States (U.S.) Department of Energy to reflect an administrative change of responsibility for the restricted area. This action also revises R–2204, by subdividing the area to create R–2204 High and R–2204 Low. The overall dimensions of R–2204 will remain the same; however, establishing of R–2204 High and R–2204 Low will enable the Department of Energy to activate only that portion of the airspace that is actually needed to contain their operations.

DATES: *Effective Date:* 0901 UTC, July 31, 2008.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Group, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

At the request of the U.S. Department of Energy, the FAA is changing the designated using agency for R–2204 in Alaska. The U.S. Department of Energy is assuming primary responsibility for operations as using agency from their contractor, Sandia Labs. In addition to the action above, the U.S. Department of Energy has assessed their planned operations within Restricted Area R–2204 and determined that many of the operations will be conducted at an altitude below 1,500 feet (ft.) above Mean Sea Level (MSL), and, therefore higher altitudes are not needed for these activities. The primary benefit of this action is to make lower altitudes available on Federal Airway V–438 between the Deadhorse Very High Frequency Omnidirectional Range (VOR) and the Barrow VOR during most periods when Restricted Area R–2204 is active.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 73 by changing the R–2204 using agency currently shown as, ''Department of Energy, Sandia National Labs/National Nuclear Security Administration, Albuquerque, NM'' to ''Department of Energy, Office of Science, Washington, DC.'' This action also subdivides R–2204 into R–2204 Low from the surface of the earth up to, but not including 1,500 ft. MSL and R–2204 High from 1,500 ft. MSL up to, but not including, 7,000 ft. MSL. This will make airspace available for flight under visual flight rules (VFR) and will permit instrument flight rules (IFR) altitudes on V–438 to be available during periods when R–2204 Low is needed to contain activity conducted at altitudes below 1,500 ft. MSL. Accordingly, since this action permits greater access to airspace by both VFR and IFR aircraft during periods of activation of R–2204, High and Low, public procedures under 5 U.S.C. 533(b) are unnecessary.

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. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. 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.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends restricted areas in Alaska.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with 311d., FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures.'' This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 73

Airspace, Prohibited areas, Restricted areas.

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 73.22 [Amended]

■ 2. § 73.22 is amended as follows:

* * * * *

R–2204 Oliktok Point, AK [Remove]

* * * * *

R–2204 Oliktok Point High, AK [New]

Boundaries. Within a 2 NM radius centered at lat. 70°30′35″ N., long. 149°51′33″ W.

Designated altitudes. 1,500 feet MSL to, but not including, 7,000 feet MSL.

Time of designation: By NOTAM, 24 hours in advance, not to exceed 30 days annually.

Controlling agency. FAA, Anchorage ARTCC.

Using agency. Department of Energy, Office of Science, Washington, DC.

R–2204 Oliktok Point Low, AK [New]

Boundaries. Within a 2 NM radius centered at lat. 70°30′35″ N., long. 149°51′33″ W.

Designated altitudes. Surface to, but not including, 1,500 feet MSL.

Time of designation: By NOTAM, 24 hours in advance, not to exceed 30 days annually.

Controlling agency. FAA, Anchorage ARTCC.

Using agency. Department of Energy, Office of Science, Washington, DC.

* * * * *

Issued in Washington, DC, on April 14, 2008.

Stephen L. Rohring,

Acting Manager, Airspace and Rules Group.

[FR Doc. E8–8579 Filed 4–18–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[USCG–2008–0238]

RIN 1625–AA00

Safety Zone: Kingsmill Resort Fireworks Display, James River, Williamsburg, VA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a 350 foot radius safety

zone on the James River in the vicinity of Kingsmill Resort in Williamsburg, VA in support of the Kingsmill Resort Fireworks Display.

DATES: This rule is effective from 9 p.m. on May 2, 2008 until 10 p.m. on May 2, 2008.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2008–0238 and are available online at *www.regulations.gov*. They are also available for inspection or copying at two locations: the 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, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays, and the Sector Hampton Roads, Norfolk Federal Building, 200 Granby St., 7th Floor, Norfolk, VA 23510 between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call LT Bill Clark, Chief Waterways Management Division, Sector Hampton Roads at (757) 668–5581. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

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. Any delay encountered in this regulation's effective date by publishing a NPRM would be contrary to public interest since immediate action is needed to prevent vessel traffic from transiting the specified waters to provide for the safety of life and property on navigable waters. Additionally, this temporary safety zone will only be enforced for 1 hour on May 2, 2008 and should have minimal impact on vessel transits due to the fact that vessels can safely transit through the zone when authorized by the Captain of the Port or his Representative and that they are not precluded from using any portion of the waterway except the safety zone area itself. For the same reasons above, 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**.

Background and Purpose

On May 2, 2008, Kingsmill Resort Destination Services of Williamsburg, VA will sponsor a fireworks display on the shoreline at position 37°13′23″ N/76°40′12″ W (NAD 1983). Due to the need to protect mariners and spectators from the hazards associated with the fireworks display, vessel traffic will be temporarily restricted within a 350 foot radius of the fireworks launching site.

Discussion of Rule

The Coast Guard is establishing a safety zone on specified waters of the James River within the area bounded by a 350 foot radius circle centered on position 37°13′23″ N/76°40′12″ W (NAD 1983) in the vicinity of Kingsmill Resort, Williamsburg, VA. This safety zone will be established in the interest of public safety during the Kingsmill Resort Fireworks event and will be enforced from 9 p.m. to 10 p.m. on May 2, 2008. General navigation within the safety zone will be restricted during the specified date and times. Except for participants and vessels authorized by the Coast Guard Captain of the Port or his representative, no person or vessel may enter or remain in the regulated area.

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. Although this regulation restricts access to the safety zone, the effect of this rule will not be significant because: (i) The safety zone will be in effect for a limited duration; 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 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 rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the James River from 9 p.m. to 10 p.m. on May 2, 2008.

The safety zone will not have a significant economic impact on a substantial number of small entities because the zone will only be in place for one hour in the evening when vessel traffic is low. Vessel traffic can pass safely around the zone. Before the effective period, we will issue maritime advisories widely available to users of the river.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

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 rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

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

an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

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

List of Subjects 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add temporary § 165.T05–023, to read as follows:

§ 165.T05–023 Safety Zone: Kingsmill Resort, James River, Williamsburg, VA.

(a) Location. The following area is a safety zone: All waters of the James River, located within the area bounded by a 350 foot radius circle centered on position 37°13′23″ N/076°40′12″ W (NAD 1983) in the vicinity of Kingsmill Resort, Williamsburg, VA and in the Captain of the Port Sector Hampton Roads zone as defined in 33 CFR 3.25–10.

(b) Definition:

(1) As used in this section; Captain of the Port Representative means any U.S. Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Hampton Roads, Virginia to act on his behalf.

(c) Regulation:

(1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, Hampton Roads or his designated representatives.

(2) The operator of any vessel in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(3) The Captain of the Port, Hampton Roads and the Sector Duty Officer at Sector Hampton Roads in Portsmouth, Virginia can be contacted at telephone number (757) 668–5555 or (757) 484–8192.

(4) The Captain of the Port Representative enforcing the safety zone can be contacted on VHF–FM marine band radion, channel 13 (156.65Mhz) and channel 16 (156.8Mhz).

(d) Enforcement Period: This section will be enforced from 9 p.m. to 10 p.m. on May 2, 2008.

Dated: April 3, 2008.

Patrick B. Trapp,

Captain, U.S. Coast Guard, Captain of the Port, Hampton Roads.

[FR Doc. E8–8441 Filed 4–18–08; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[EPA–HQ–OPPT–2006–0213; FRL–8358–4]

RIN 2070–AB27

Revocation of Significant New Use Rules on Certain Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to 40 CFR 721.185, EPA is revoking significant new use rules (SNURs) promulgated under section 5(a)(2) of the Toxic Substances

Control Act (TSCA) for four chemical substances. Pursuant to 40 CFR 721.160, the SNUR for the chemical substance covered by premanufacture notice (PMN) P–98–475 designated certain activities as significant new uses based on concerns identified in a corresponding TSCA section 5(e) consent order for that chemical substance. Based on the concern criteria in 40 CFR 721.170(b), for the chemical substances covered by PMNs P–98–1043, P–99–467, and P–01–71, EPA issued non-5(e) SNURs (i.e., SNURS on substances that are not subject to TSCA section 5(e) consent orders) designating certain activities as significant new uses. Subsequently, EPA received and reviewed new information and test data for each of the chemical substances. Based on the new data, the Agency no longer finds that activities prohibited by the TSCA section 5(e) consent order for P–98–475, nor activities not described in PMNs P–98–1043, P–99–0467, and P–01–71 constitute significant new uses.

DATES: This final rule is effective June 20, 2008.

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPPT–2006–0213. All documents in the docket are listed in the docket index available in regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. 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, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Abeer Hashem, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–1117; e-mail address: *hashem.abeer@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture, process, or use the chemical substances contained in this revocation. Potentially affected entities may include, but are not limited to:

- Chemical manufacturers (NAICS code 325), e.g., persons manufacturing, importing, processing, or using chemicals for commercial purposes.
- Petroleum and coal product industries (NAICS code 324), e.g., persons manufacturing, importing, processing, or using chemicals for commercial purposes.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in 40 CFR 721.5. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

II. Background

A. What Action is the Agency Taking?

The Agency proposed revocation of these SNURs in the **Federal Register** of October 6, 2006 (71 FR 59066) (FRL–7770–9). The background and reasons for the revocation of each individual SNUR are set forth in the preamble to the proposed revocation. The comment period closed on November 6, 2006. EPA received no comments regarding the proposed revocation of the SNURs. Therefore, EPA is revoking these SNURs.

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

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2) of TSCA. Once a significant new use rule (SNUR) becomes final, section 5(a)(1)(B) of TSCA requires persons to submit a significant new use notice (SNUN) to EPA at least 90 days before they manufacture, import, or process the substance for that use. The general SNUR provisions are found at 40 CFR part 721, subpart A.

During review of PMN P–98–475, EPA concluded that regulation was warranted and issued a TSCA section 5(e) consent order for the chemical substance. Subsequently, EPA promulgated a corresponding SNUR under 40 CFR 721.160. Upon review of PMNs P–98–1043, P–99–467, and P–01–71, based on the concern criteria in 40 CFR 721.170 (b)(3)(ii) and (b)(4)(ii), EPA determined that there was a concern about the substances' health or environmental effects and promulgated non-5(e) SNURs for these chemical substances.

Under 40 CFR 721.185, EPA may at any time revoke a SNUR for a chemical substance which has been added to subpart E of 40 CFR part 721, if EPA makes one of the determinations set forth in 721.185 (a)(1) through (a)(6). As detailed for each of the four chemical substances in the proposed rule of October 6, 2006 (71 FR 59066), based on new information and test data, EPA has determined that criteria set forth in 721.185 (a)(4) and (a)(5) have been satisfied. Therefore, EPA has revoked the section 5(e) consent order for P–98–475 and is hereby revoking the SNUR provisions for all four of these chemical substances. When this revocation becomes effective, EPA will no longer require notice of intent to manufacture, import, or process these substances for any significant new uses. In addition, export notification requirements under section 12(b) of TSCA triggered by these SNURs will no longer be required.

III. Statutory and Executive Order Reviews

This rule revokes or eliminates an existing regulatory requirement and does not contain any new or amended requirements. As such, the Agency has determined that this SNUR revocation will not have any adverse impacts, economic or otherwise.

The Office of Management and Budget (OMB) has exempted these types of regulatory actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This rule does not contain any information collections subject to approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq*. Since this rule eliminates a reporting requirement, the Agency certifies pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), that this SNUR revocation will not have a significant economic impact on a substantial number of small entities.

For the same reasons, this action does not require any action under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). This rule has neither Federalism implications, because it will not have substantial direct effects on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999), nor tribal implications, because it will not have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (59 FR 22951, November 6, 2000).

This action is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined under Executive Order 12866, and it does not address environmental health or safety risks disproportionately affecting children. It is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use. Because this action does not involve any technical standards, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), does not apply to this action. This action does not involve special considerations of environmental justice related issues as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations* (59 FR 7629, February 16, 1994).

IV. Congressional Review Act

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

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: April 11, 2008.

Charles M. Auer,

Director, Office of Pollution Prevention and Toxics.

■ Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

■ 1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

§§ 721.3850, 721.5718, 721.9785, and 721.9810 [Removed]

■ 2. Remove §§ 721.3850, 721.5718, 721.9785, and 721.9810.

[FR Doc. E8–8559 Filed 4–18–08; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 6 and 64

[WC Docket No. 04–36, CG Docket No. 03–123, WT Docket No. 96–198 and CC Docket No. 92–105; FCC 07–110]

IP-Enabled Services; Implementation of Sections 255 and 251(a)(2) of The Communications Act of 1934, as Enacted by The Telecommunications Act of 1996: Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities; Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission amends it rules to remove notes contained in the Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities rules, and the Miscellaneous Rules Relating to Common Carriers. The notes indicated that the Commission would publish notice of the effective date of the rules after it obtained OMB approval. Since the Commission announced the effective date of the rules in the **Federal Register**, the notes are no longer applicable.

DATES: Effective April 21, 2008.

FOR FURTHER INFORMATION CONTACT: Lisa Boehley of the Consumer & Governmental Affairs Bureau at (202) 418–7395 (voice), (202) 418–0416 (TTY), or e-mail *lisa.boehley@fcc.gov.*

SUPPLEMENTARY INFORMATION: On August 6, 2007, the Commission published final rules in the **Federal Register** at 72 FR 43546, which extended the disability access requirements that apply to telecommunications service providers and equipment manufacturers under section 255 of the Communications Act of 1934, as amended, to providers of ''interconnected voice over Internet Protocol (VoIP) services,'' as defined by the Commission, and to manufacturers of specially designed equipment used to provide those services. In addition, the Commission extended the Telecommunications Relay Services (TRS) requirements contained in its regulations to interconnected VoIP providers. This document amends § 6.11(a)–(b), 6.18(b), 6.19, 64.604(a)(5),

64.604(c)(1)–(c)(3), 64.604(c)(5)(iii)(C), 64.604(c)(5)(iii)(E), 64.604(c)(5)(iii)(G), 64.604(c)(6)(v)(A)(3), 64.604(c)(6)(v)(G), 64.604(c)(7), and 64.606(b), by removing the notes contained in those rule sections as they appeared in the **Federal Register**.

List of Subjects in 47 CFR Part 64

Individuals with disabilities, Telecommunications.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 6 and 64 as follows:

PART 6—ACCESS TO TELECOMMUNICATIONS SERVICE, TELECOMMUNICATIONS EQUIPMENT AND CUSTOMER PREMISES EQUIPMENT BY PERSONS WITH DISABILITIES

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

Authority: 47 U.S.C. 151–154, 251, 255, and (303)(r).

§ 6.11 [Amended]

■ 2. Section 6.11 is amended by removing the notes to paragraphs (a) and (b).

§ 6.18 [Amended]

■ 3. Section 6.18 is amended by removing the note to paragraph (b).

§ 6.19 [Amended]

■ 4. Section 6.19 is amended by removing the note to § 6.19.

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

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

Authority: 47 U.S.C. 154, 254(k); secs. 403(b)(2)(B), (c), Pub. L. 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 228, and 254(k) unless otherwise noted.

§ 64.604 [Amended]

■ 6. Section 64.604 is amended by removing the notes to paragraphs (a)(5), (c)(1) through (c)(3), (c)(5)(iii)(C), (c)(5)(iii)(E), (c)(5)(iii)(G), (c)(6)(v)(A)(3), (c)(6)(v)(G), and (c)(7).

§ 64.606 [Amended]

■ 7. Section 64.606 is amended by removing the note to paragraph (b).

[FR Doc. E8–8596 Filed 4–18–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 03–123 and WC Docket No. 05–196; FCC 08–78]

Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities; E911 Requirements for IP-Enabled Service Providers

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission adopts emergency call handling requirements for Internet-based telecommunications relay service (TRS) providers. These measures will ensure that persons using Internet-based forms of TRS, *i.e.*, Video Relay Service (VRS), Internet Protocol (IP) Relay, and IP captioned telephone relay service (IP CTS), can promptly access emergency services, pending adoption of a solution that will permit Internet-based TRS providers to immediately and automatically place the outbound leg of an emergency call to an appropriate public safety answering point (PSAP), designated statewide default answering point, or appropriate local emergency authority.

DATES: Effective May 21, 2008.

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

FOR FURTHER INFORMATION CONTACT: Thomas Chandler, Consumer and Governmental Affairs Bureau, Disability Rights Office at (202) 418–1475 (voice), (202) 418–0597 (TTY), or e-mail at *Thomas.Chandler@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; E911 Requirements for IP-Enabled Service Providers,* Report and Order (*VRS 911 Order*), FCC 08–78, adopted March 11, 2008, and released March 19, 2008, in CG Docket No. 03–123 and WC Docket No. 05–196. FCC 08–78 addresses issues arising from the Commission's *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* Notice of Proposed Rulemaking (*VRS/IP Relay 911 NPRM*), CG Docket No. 03–123, FCC 05–196, published at 71 FR 5221, February 1, 2006; Declaratory Ruling (*IP CTS Declaratory Ruling*), CG Docket No. 03–123, FCC 06–186, published at 72 FR 6960, February 14, 2007. The full text of FCC 08–78 and copies of any subsequently filed documents in this matter 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. FCC 08–78 and copies of subsequently filed documents in this matter also may be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact the Commission's duplicating contractor at its Web site *www.bcpiweb.com* or by calling 1–800–378–3160. 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 and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). FCC 08–78 can also be downloaded in Word or Portable Document Format (PDF) at: *http://www.fcc.gov/cgb/dro/trs.html.*

Paperwork Reduction Act of 1995 Analysis

FCC 08–78 does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, it does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 106–198, *see* 44 U.S.C. 3506(c)(4).

Synopsis

Background

1. In the *2000 TRS Order,* CC Docket No. 98–67, 15 FCC Rcd at 5182–84, paragraphs 99–102, published at 65 FR 38432, June 21, 2000 and 65 FR 38490, June 21, 2000, the Commission required TRS providers to direct emergency calls as quickly as possible to the correct PSAP by matching a caller's phone number with the appropriate PSAP electronically. The Commission also required communications assistants (CAs) to pass along the caller's telephone number to the PSAP orally, which would allow the PSAP to directly call back the calling party if the relay call became disconnected.

2. In 2003, the Commission again addressed the rules governing TRS access to emergency services. *2003 TRS Order,* CC Docket No. 98–67, CG Docket No. 03–123, 18 FCC Rcd 12379, 12406–09, paragraphs 40–46 (June 17, 2003),

published at 68 FR 50093, August 25, 2003 and 68 FR 50973, August 25, 2003. The Commission clarified that TRS providers must route emergency TRS calls to the appropriate PSAP and required TRS providers to adjust their databases accordingly. *2003 TRS Order,* 18 FCC Rcd at 12406–08, paragraphs 40–42 (rejecting proximity as criterion for determining the appropriate PSAP and defining it, in light of the statutory functional equivalency mandate, as the PSAP to which a direct 911 call would be delivered over the PSTN). On reconsideration, the Commission clarified that the appropriate PSAP is ''either a PSAP that the caller would have reached if he had dialed 911 directly, or a PSAP that is capable of enabling the dispatch of emergency services to the caller in an expeditious manner.'' *2004 TRS Report and Order,* CC Docket Nos. 90–571 and 98–67, CG Docket No. 03–123, 19 FCC Rcd at 12559, paragraph 216, published at 69 FR 53346, September 1, 2004 and 69 FR 53382, September 1, 2004. Because of jurisdictional boundaries, the appropriate PSAP is not always the geographically closest PSAP to the calling party.

3. *Emergency Call Handling Issues for Internet-Based Forms of TRS.* Through a series of orders between 2001 and 2007, the Commission examined the emergency call handling requirement as applied to Internet-based relay services and, in particular, considered the technological challenges associated with determining the geographic location of TRS calls that originate over the Internet. The Commission recognized that because these services use the Internet, rather than a telephone and the PSTN, for the link of the call between the calling party and the relay provider, the relay provider does not receive the ANI of the calling party. *See, e.g., 2004 TRS Report and Order,* 19 FCC Rcd at 12522, paragraph 117. As a result, there is greater complexity with identifying the caller's location and determining the appropriate PSAP to call to respond to the emergency. *See, e.g., 2004 TRS Report and Order,* 19 FCC Rcd at 12522, paragraph 117; *see also IP Relay Declaratory Ruling and Second FNPRM,* 17 FCC Rcd at 7789, paragraph 30, published at 67 FR 39863, June 11, 2002 and 67 FR 39929, June 11, 2002 (recognizing that, without ANI of the calling party, IP Relay provider petitioner could not provide PSAP with information regarding the calling party's location); and 47 CFR 64.604(a)(4) of the Commission rules. The Commission therefore determined that a temporary waiver was needed to the extent that these technological challenges hindered providers' ability to ''immediately and automatically'' place the outbound leg of an emergency call to an appropriate PSAP, as required by the Commission's emergency call handling rule. *See, e.g., 2001 VRS Waiver Order,* 17 FCC Rcd at 161, paragraph 11 (granting temporary waiver of emergency call handling requirement for VRS providers). The temporary waivers of the emergency call handling rule for VRS and IP Relay were scheduled to expire after December 31, 2007. *See 2006 VRS Waiver Order,* 21 FCC Rcd 14554; published at 72 FR 11789, March 14, 2007 (extending VRS waiver through December 31, 2007); *IP Relay Reconsideration Order,* 18 FCC Rcd 4761(extending IP Relay waiver through December 31, 2007); *2007 IP CTS Declaratory Ruling,* 22 FCC Rcd 379 (waiving emergency call handling requirement for IP CTS until emergency access for the Internet-based forms of TRS is resolved).

4. In November 2005, the Commission released the *VRS/IP Relay 911 NPRM* seeking comment on possible means by which VRS and IP Relay providers might be able to handle emergency calls so that the waivers would no longer be necessary. *VRS/IP Relay 911 NPRM,* 20 FCC Rcd at 19480–81, paragraphs 9–12 (at this time, the Commission had not yet recognized IP CTS as a form of TRS). The Commission recognized that many individuals use VRS and IP Relay to contact emergency services, rather than making emergency calls by directly calling 911 through a TTY and a traditional telephone line. The Commission therefore sought comment on what emergency call handling rules should apply to VRS and IP Relay providers, including by what means these providers may determine the appropriate PSAP to contact when they receive an emergency call. The Commission also sought comment on whether and how VRS and IP Relay providers may identify incoming calls as emergency calls so that such calls can promptly be directed to a Communications Assistant (CA) without waiting in a queue. *VRS/IP Relay 911 NPRM,* 20 FCC Rcd at 19487, paragraph 26.

5. In the *VRS/IP Relay 911 NPRM,* the Commission also sought comment on whether it should require the Internet-based TRS providers to establish a registered location process, similar to that adopted in the *VoIP 911 Order,* 20 FCC Rcd 10271, paragraph 46, published at 70 FR 37273, June 29, 2005, whereby each Internet-based TRS provider would be required to obtain from its customers, prior to the initiation of service, the physical location from which the particular relay service will be utilized, so that a CA may determine an appropriate PSAP to call to respond in the event of an emergency. *VRS/IP Relay 911 NPRM,* 20 FCC Rcd at 19484–87, paragraphs 19–24 (citing *VoIP 911 Order,* 20 FCC Rcd at 10271, paragraph 46) (describing Registered Location process for interconnected VoIP providers). Noting that the *VoIP 911 Order* had further required interconnected VoIP providers to offer their consumers a method of updating their ''Registered Location,'' the Commission sought comment on how it might ensure that Internet-based TRS providers have current location information, *i.e.*, that the Registered Location is the actual location of the user when making an emergency call. *VRS/IP Relay 911 NPRM,* 20 FCC Rcd at 19485, paragraph 21 (citing *VoIP 911 Order,* 20 FCC Rcd at 10271, paragraph 46) (requiring providers of interconnected VoIP services that can be utilized from more than one physical location to provide their end users ''one or more methods of updating information regarding the user's physical location'')); *see also* 47 CFR 9.5(d)(2) of the Commission's rules (''[I]nterconnected VoIP service providers must * * * [p]rovide their end users one or more methods of updating their Registered Location, including at least one option that requires use only of the CPE necessary to access the interconnected VoIP service. Any method utilized must allow an end user to update the Registered Location at will and in a timely manner.''). The Commission asked, for example, if users should be required to affirmatively acknowledge whether they are at their Registered Location each time they initiate a call and, if they are not at their Registered Location, be prompted or required to provide their present location. *VRS/IP Relay 911 NPRM,* 20 FCC Rcd at 19485, paragraph 21; cf. *VoIP 911 Order,* 20 FCC Rcd at 10271, paragraph 46 (any method utilized by an interconnected VoIP provider to update a customer's Registered Location must allow an end user to do so ''at will and in a timely manner''), 20 FCC Rcd at 10273, paragraph 49 (noting that ''customers of portable interconnected VoIP services likely will need to be instructed on how to register their locations with their providers, the need to update that information promptly when they relocate, and how to confirm that the registration is effective'').

6. In response to the *VRS/IP Relay 911 NPRM,* all of the commenting providers asserted that they presently do not have

the technological means of automatically obtaining identifiable location information from VRS and IP Relay callers. At that point in time, providers stated that they had been working on a technological solution for emergency access through Internet-based TRS services, but they required additional time to find a solution. The Commission also notes that the 2007 waiver reports filed by VRS and IP Relay providers state that presently it is not technologically feasible to automatically route emergency calls to an appropriate PSAP. *See generally 2004 TRS Report and Order,* 19 FCC Rcd at 12520–22, paragraphs 111, 116–18 (conditioning waivers of the TRS mandatory minimum standards on the filing of annual reports addressing waived standards). Although commenters generally opposed Commission adoption of a Registered Location process, similar to that adopted in the *VoIP 911 Order,* others expressed qualified support for it. Likewise, a majority of commenters opposed the proposed adoption of a procedure for updating a customer's Registered Location information that would require Internet-based TRS callers to acknowledge their location at the beginning of every call, a minority of commenters expressed qualified support for such a requirement, provided that a user is offered the option to update his or her location at the start of each call, but then need not do anything if there has been no change in the caller's previously registered location.

7. On November 15, 2006, the Commission held an E911 disability access summit (E911 Summit) to discuss advances in E911 calling technology and E911 access for persons with hearing and speech disabilities, including via VRS and IP Relay. *FCC Releases Agenda for November 15 E9–1–1 Disability Access Summit,* News Release (November 13, 2006). During the E911 Summit, Internet-based TRS providers noted that technology had not yet been developed to allow them to immediately place the outbound leg of an Internet-based TRS emergency call to the appropriate PSAP. They also explained the interim methods being used to handle emergency VRS and IP Relay calls, even though this requirement is waived.

Discussion

8. In FCC 08–78, the Commission takes action to ensure that users of the Internet-based forms of TRS can better rely on these services to make emergency calls. The Commission does not believe that the continued waiver of the emergency call handling requirement can be justified when balanced against the obvious public safety benefits derived from ensuring reliable 911 access.

A. Emergency Call Handling Requirements for Internet-Based TRS Providers

9. In light of the present imperative to provide Internet-based TRS users a reliable means of accessing emergency services, the Commission concludes that the waivers of the emergency call handling requirement for VRS, IP Relay, and IP CTS should terminate contemporaneously with the effective date of FCC 08–78 on May 21, 2008. In addition, at that time (*i.e.*, May 21, 2008), the Commission requires VRS, IP Relay, and IP CTS providers to accept and handle emergency calls and to access, either directly or via a third party, a commercially available database that will allow the provider to determine an appropriate PSAP, designated statewide default answering point, or appropriate local emergency authority that corresponds to the caller's location, and to relay the call to that entity. Further, providers will be required to: (1) Implement a system that ensures that they answer an incoming emergency call before other non-emergency calls (*i.e.*, prioritize emergency calls and move them to the top of the queue); (2) request, at the beginning of every emergency call, the caller's name and location information (in time, this requirement will be superseded by the Registered Location process, discussed herein); (3) deliver to the PSAP, designated statewide default answering point, or appropriate local emergency authority, at the outset of the outbound leg of the call, at a minimum, the name of the relay user and location of the emergency, as well as the name of the relay provider, the CA's callback number, and the CA's identification number, thereby enabling the PSAP, designated statewide default answering point, or appropriate local emergency authority to re-establish contact with the CA in the event the call is disconnected; and (4) in the event one or both legs of the call are disconnected (*i.e.*, either the call between the TRS user and the CA, or the outbound voice telephone call between the CA and the PSAP, designated statewide default answering point, or appropriate local emergency authority), immediately re-establish contact with the TRS user and/or the appropriate PSAP, designated statewide default answering point, or appropriate local emergency authority and resume handling the call, when feasible. The Commission recognizes that, in some instances, the CA may not be able to call back a TRS customer using one of the Internet-based forms of TRS because the CA will not know the current IP address of the relay customer. The Commission urges Internet-based TRS providers to give their customers the option of providing an alternative method of re-establishing contact with the caller to facilitate a callback in the event that an emergency call is disconnected. The Commission also notes that, in this context, providers are expressly permitted to contact consumers directly, notwithstanding any prohibitions regarding contacts with consumers as described in other Commission orders. *See, e.g., Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* CG Docket No. 03–123, Report and Order and Declaratory Ruling, FCC 07–186, paragraph 95 (November 19, 2007), published at 73 FR 3197, January 17, 2008 (placing restrictions on use of consumer or call database information to contact TRS users).

10. Based on the record in this proceeding, which reflects that some providers have already implemented some of these measures, the Commission believes it is reasonable for all providers to comply with these requirements by the effective date announced here. The Commission affirms that providers' costs of compliance with FCC 08–78 are compensable from the Interstate TRS Fund as part of providing TRS service in compliance with the mandatory minimum standards. The Commission reminds providers, however, that costs are not recoverable for meeting waived mandatory minimum standards. *See, e.g., Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities,* CG Docket No. 03–123, Order on Reconsideration, 21 FCC Rcd 8050, 8057, paragraph 15 (July 12, 2006) (*2006 TRS Order on Reconsideration*), published at 71 FR 47141, August 16, 2006. The Commission amends its rules to reflect these new requirements.

11. In the event that a relay caller is incapacitated or is otherwise unable or unwilling to provide their name and location, the provider should use best efforts to obtain it, including providing to an appropriate PSAP, designated statewide answering point, or appropriate local emergency authority, any location information that a customer may have on file with the provider in connection with his or her ''customer profile.'' The Commission notes that some (but not all) TRS consumers file customer profiles

detailing the customer's preferences with respect to particular aspects of a provider's relay service (*e.g.*, designating a preference regarding the gender of the CA who relays the customer's TRS calls). To the extent that the customer profile includes location information, this information may assist a CA in identifying an appropriate PSAP, designated statewide answering point, or appropriate local emergency authority. (The Commission emphasizes that a provider must use best efforts to handle an emergency call and place the outbound leg of such a call, even if the calling party refuses to provide his or her identity.) Further, on an interim basis, the requirement to deliver emergency calls permits VRS, IP Relay, and IP CTS providers to route 911 calls to PSAPs' ten-digit administrative lines. Upon the effective date of the forthcoming Registered Location requirement discussed herein, however, all Internet-based TRS calls must be routed through the Wireline E911 Network. *See VoIP 911 Order*, 20 FCC Rcd at 10270 paragraph 42 and note 142 (requiring interconnected VoIP providers to transmit 911 calls to the appropriate PSAP via the Wireline E911 Network).

12. The Commission recognizes that there are different ways by which providers may ensure that emergency calls receive priority handling and are not put in a queue with all incoming calls to wait for an available CA to handle the call. Some providers note, for example, that they would use a separate IP access address dedicated for emergency calls only. The Commission does not mandate a specific means by which providers must give priority to, and answer, emergency calls, so long as such calls are handled in accordance with the requirements set forth above.

13. The Commission's Consumer & Governmental Affairs Bureau has previously advised TRS providers of their obligation to handle incoming calls in the order in which they are received. *See FCC Clarifies that Certain TRS Marketing and Call Handling Practices are Improper*, CC Docket No. 98–67, CG Docket No. 03–123, Public Notice, DA 05–141 (released January 26, 2005), at 3, published at 70 FR 8034, February 17, 2005. The Bureau issued this advisory in response to complaints that certain TRS providers were selectively handling non-emergency calls placed by preferred customers ahead of non-emergency calls placed by other, non-preferred customers. In that context, the Bureau determined that the selective handling of incoming calls was improper and inconsistent with the notion of functional equivalency. The Commission clarifies here that the obligation to handle incoming calls in the order in which they are received applies to non-emergency calls only and that, under the call handling rules the Commission adopts, providers are under an affirmative obligation to ensure that emergency calls receive priority handling. Because of the importance of emergency call handling, the Commission expects that providers will ensure adequate staffing of emergency call handling processes so that CAs are not required to disconnect non-emergency calls in order to process emergency calls.

14. Based on the record before us, it appears that some Internet-based TRS providers presently accept and handle emergency calls made via VRS or IP Relay by asking the caller for location and other essential information necessary to identify, and make the outbound call to, an appropriate PSAP. In this regard, several VRS providers assert that as long as the providers obtain the location information from the calling party, they can route the call to an appropriate PSAP based upon PSAP databases that are commercially available.

15. In conjunction with the requirement that a CA request, at the beginning of an emergency call, the name and location information of the relay user placing the call, the Commission permits a CA to memorialize the caller's name and location information in writing for the purposes of communicating this information to an appropriate PSAP, designated statewide default answering point, or appropriate local emergency authority, and facilitating access to emergency services. The Commission also permits a CA to retain such information after the call, where necessary to facilitate the dispatch of emergency services or for other emergency (*e.g.*, where a relay caller becomes incapacitated while placing a relay call) or law enforcement purposes. The Commission notes that section 225(d)(1)(F) of the Act and § 64.604(a)(2) of the Commission's TRS rules generally prohibit a CA from keeping records of the ''content'' of a relay conversation beyond the duration of a call. *See* 47 U.S.C. 225(d)(1)(F) of the Act (instructing the Commission to prescribe regulations prohibiting relay operators from keeping records of the content of any conversation beyond the duration of the call); 47 CFR 64.604(a)(2)(i) of the Commission's rules (prohibiting relay operators from keeping records of the content of any conversation beyond the duration of the call). With respect to these provisions, the Commission concludes that the ''content'' of a relayed conversation reasonably does not include basic identifying information, such as the name and present location of an emergency TRS caller. Consistent with this interpretation, the Commission permits a CA to memorialize in writing, and retain records pertaining to, the name and location of a consumer who places an emergency call via an Internet-based TRS provider. The Commission reminds providers, however, that even this information may be made available only to emergency call handlers, and emergency response or law enforcement personnel solely for the purpose of ascertaining a customer's location in an emergency situation or for other emergency or law enforcement purposes.

16. Finally, the Commission notes that at least two Internet-based TRS providers have requested that the Commission exempt these providers from liability resulting from their handling of emergency TRS calls to the same extent Congress has insulated wireline and wireless carriers from liability in connection with those carriers' handling of emergency 911 and E911 calls. As the Commission stated in the interconnected VoIP context, before it would consider taking any action to preempt liability under state law, the Commission would need to demonstrate that limiting liability is ''essential to achieving the goals of the Act.'' To its knowledge, no commenter contends here that such action is ''essential'' to achieving the goals of the Act. Nor has any commenter identified a source of authority for providing liability protection to Internet-based TRS providers. For the reasons the Commission denied requests to limit the liability of interconnected VoIP providers in the *VoIP 911 Order*, the Commission similarly declines to limit the liability of Internet-based TRS providers in connection with their handling of emergency TRS calls. *VoIP 911 Order*, 20 FCC Rcd at 10275, paragraph 54 (noting that Congress had enacted no liability protection for interconnected VoIP providers, the Commission declined to adopt such protections and would not consider doing so unless such action were deemed to be ''essential to achieving the goals of the Act''). Although Congress has provided limited liability protections to local exchange carriers and wireless carriers, it has not done so for Internet-based TRS providers. *See* Wireless Communications and Public Safety Act of 1999, Public Law 106–81, 113 Stat. 1286 (1999) (*911 Act*); 47

U.S.C. 615a; *911 Act* section 4 (providing wireless carriers same degree of liability protection relating to 911 service as local exchange carriers). The Commission notes that in the *VoIP 911 Order*, the Commission advised interconnected VoIP providers seeking to protect themselves from liability for negligence to do so through ''their customer contracts and through their agreements with PSAPs, as some interconnected VoIP providers have done.'' Nothing in FCC 08–78 prevents Internet-based TRS providers from taking similar actions. In particular, nothing the Commission does here would prevent a TRS provider from incorporating into their consumer notification or future registration processes described herein, the same protections that interconnected VoIP providers typically include in their subscription agreements with consumers.

17. As noted above, the Commission is adopting these requirements to help facilitate access to emergency services for consumers of Internet-based relay services, pending the adoption of a longer term solution. These requirements will become effective May 21, 2008, and the Commission extends the present VRS and IP Relay emergency call handling waivers, previously scheduled to expire after December 31, 2007, such that those waivers, along with the IP CTS emergency call handling waiver, will remain in effect until May 21, 2008.

B. Transition to Additional E911 Capabilities for Internet-Based Forms of TRS

18. The Commission believes that the use of a Registered Location process, similar to that adopted in the *VoIP 911 Order*, constitutes an additional critical component of an E911 solution for Internet-based TRS providers, so that a CA may promptly determine an appropriate PSAP, designated statewide default answering point, or appropriate local emergency authority to call to respond to the emergency. Accordingly, as the Commission requires of all interconnected VoIP providers, the Commission will require in a forthcoming order that all Internet-based TRS providers obtain or have access to consumer location information for the purposes of emergency calling requirements.

19. As the Commission has stated previously, the goal of its E911 rules is to provide meaningful location information to first responders, regardless of the technology or platform employed. *See, e.g., 2007 Wireless E911 NPRM*, 22 FCC Rcd at 10609, paragraph 6. Public safety officials need to receive accurate and timely information concerning the current location of an individual who places an emergency call, notwithstanding the platform or technology used by the provider or the means by which the individual places the call. The Commission believes that user registration is critical to achieving the goal of providing location identification to first responders in the context of emergency calls placed over Internet-based TRS. As noted above, providers' costs of compliance with FCC 08–78 are compensable from the Interstate TRS Fund as part of providing TRS service in compliance with the mandatory minimum standards, but costs associated with meeting waived mandatory minimum standards are not recoverable from the fund. Accordingly, the registration process the Commission outlines today, in large part, will be guided by the manner in which interconnected VoIP providers obtain location information of interconnected VoIP users pursuant to the Commission's *VoIP 911 Order*. However, the Commission recognizes, as some commenters have noted, that there are differences between interconnected VoIP services and Internet-based TRS that must be addressed in adopting a registration process for Internet-based TRS users. For example, while interconnected VoIP subscribers receive a ten-digit telephone number in conjunction with the service, Internet-based TRS users currently do not. Accordingly, the Commission will adopt a ten-digit numbering plan in a future Commission order that ties numbering to the registration process and renders relay providers' situation more analogous to that of interconnected VoIP providers.

20. The Commission plans to move forward on adopting a ten-digit numbering plan in an expeditious manner. Specifically, simultaneously with the Commission's release of FCC 08–78, the Commission's Consumer & Governmental Affairs Bureau is releasing a public notice seeking to refresh the record on relay service numbering issues. *See 2008 Numbering PN*. The Commission plans to hold a stakeholder workshop immediately following the release of these items. The Commission commits to completing a final order on a ten-digit numbering plan in the second quarter of this year. In order to provide stakeholders sufficient time to implement these rules, the Commission will require that the ten-digit numbering plan be implemented no later than December 31, 2008.

21. *Consumer Notification Requirement*. VRS providers currently are required to include ''a clear and bold written statement on their web site and promotional materials explaining the shortcomings and potential dangers of using VRS to place an emergency call'' so that those making a 911 call over TRS facilities understand the implications of making such a call, particularly in the context of the Commission's encouragement to TRS users to access emergency services directly. In the *VoIP 911 Order*, the Commission required interconnected VoIP service providers to ''specifically advise every subscriber, both new and existing, prominently and in plain language, [of] the circumstances under which E911 service may not be available.'' *VoIP 911 Order*, 20 FCC Rcd at 10272, paragraph 48. The Commission also required interconnected VoIP providers to ''obtain and keep a record of affirmative acknowledgement by every subscriber, both new and existing, of having received and understood this advisory'' and to distribute labels ''warning subscribers if E911 service may be limited or not available and instructing the subscriber to place them on and/or near the CPE used in conjunction with the interconnected VoIP service.'' In light of these requirements for interconnected VoIP providers, the Commission's *VRS/IP Relay 911 NPRM* sought comment on whether the Commission's current consumer notification requirements for Internet-based TRS providers should be revised, for example, to require that providers specifically advise new and existing subscribers of the circumstances under which E911 service may not be available through Internet-based forms of TRS or may be in some way limited by comparison to traditional E911 service. *VRS/IP Relay 911 NPRM*, 20 FCC Rcd at 19486, paragraph 22. The Commission also sought comment on whether Internet-based TRS providers should be required to provide appropriate warning labels for installation on CPE used in connection with Internet-based relay services or to obtain and keep a record of affirmative acknowledgement by every subscriber of having received and understood this advisory.

22. Consistent with the *VoIP 911 Order*, the Commission requires each Internet-based TRS provider, if not already doing so, to include an advisory on its Web site and in any promotional materials directed to consumers, prominently and in plain language, explaining the circumstances under which emergency calls made via Internet-based TRS may be in some way

limited by comparison to traditional E911 service. The Commission believes it is important to caution consumers of the limitations of using the Internet-based forms of TRS to make emergency calls in the event that a caller does place an emergency call via an Internet-based relay service. In addition, the Commission may address additional consumer notification requirements in a forthcoming order, consistent with the consumer notification requirements adopted in the *VoIP 911 Order*, as appropriate.

23. *Enhanced 911 Service.* In the *VoIP 911 Order,* the Commission required interconnected VoIP providers to transmit all E911 calls to the appropriate PSAP, designated statewide answering point, or appropriate local emergency authority via the Wireline E911 Network, and prohibited the use of so-called ten-digit ''administrative numbers.'' *See VoIP 911 Order,* 20 FCC Rcd at 10266–69, paragraphs 37–41 (requiring interconnected VoIP providers to transmit all E911 calls via the Wireline E911 Network). The Commission defined ''Wireline E911 Network'' as a ''dedicated wireline network that (1) is interconnected with but largely separate from the public switched telephone network, (2) includes a selective router, and (3) is utilized to route emergency calls and related information to PSAPs, designated statewide default answering points, appropriate local emergency authorities or other emergency answering points.'' 47 CFR 9.3 of the Commission's rules (defining Wireline E911 Network). In a typical implementation, the Wireline E911 Network includes the Selective Router, which receives 911 calls from competitive and incumbent LEC central offices over dedicated trunks. The Selective Router, after querying an incumbent LEC-maintained Selective Router Database (SRDB) to determine which PSAP serves the caller's geographic area, forwards the calls to the PSAP that has been designated to serve the caller's area, along with the caller's phone number (ANI). The PSAP then forwards the caller's ANI to an incumbent LEC maintained Automatic Location Information database (ALI Database), which returns the caller's physical address (that has previously been verified by comparison to a separate database known as the Master Street Address Guide (MSAG)). The Wireline E911 Network thus consists of: the Selective Router; the trunk line(s) between the Selective Router and the PSAP; the ALI Database; the SRDB; the trunk line(s) between the ALI database and the PSAP; and the MSAG. *VoIP 911 Order,* 20 FCC Rcd at 10252, paragraph 15 (citations omitted). The Commission required that all interconnected VoIP calls be routed through the dedicated Wireline E911 Network based on evidence in the record that use of ten-digit administrative numbers for routing E911 calls is not in the public interest to the extent that these numbers are not as reliable or consistently staffed as Wireline E911 Network call centers.

24. Consistent with the *VoIP 911 Order,* the Commission expects that a forthcoming order will require that, upon the effective date of the forthcoming Registered Location requirement, an Internet-based TRS provider must transmit all 911 calls via the dedicated Wireline E911 Network, and the Registered Location must be available from or through the ALI Database. By requiring that all 911 calls be routed via the dedicated Wireline E911 Network, Internet-based TRS service providers would provide E911 service in those areas where Selective Routers are utilized and they would provide such call back and location information as a PSAP, designated statewide default answering point, or appropriate local emergency authority is capable of receiving and utilizing. The Commission expects that providers will be able to use much of the same infrastructure and technology that is already in place for the delivery of 911 calls by interconnected VoIP service providers.

Conclusion

25. Because of the importance of emergency call handling for all Americans, in FCC 08–78, the Commission adopts interim emergency call handling requirements for Internet-based TRS providers. These measures will ensure that persons using Internet-based forms of TRS can promptly access emergency services pending the development of a technological solution that will permit Internet-based TRS providers to automatically determine the geographic location of the consumer and place the outbound leg of an emergency call to an appropriate PSAP, designated statewide default answering point, or appropriate local emergency authority. These actions reinforce the Commission's longstanding and continuing commitment to make available a nationwide communications system that promotes the safety and welfare of all Americans, including individuals with hearing and speech disabilities.

Final Regulatory Flexibility Certification

26. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' 5 U.S.C. 605(b). The RFA generally defines ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' 5 U.S.C. 601(6). In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). Small Business Act, 15 U.S.C. 632.

27. FCC 08–78 adopts emergency call handling requirements for Internet-based TRS providers. These measures will ensure that persons using Internet-based TRS services can promptly access emergency services. The Commission requires VRS, IP Relay, and IP CTS providers to accept and handle emergency calls and to access, either directly or via a third party, a commercially available database that will allow the provider to determine an appropriate PSAP, designated statewide default answering point, or appropriate local emergency authority that corresponds to the caller's location, and to relay the call to that entity. Further, FCC 08–78 requires that providers: (1) Implement a system that ensures that providers answer an incoming emergency call before other non-emergency calls; (2) request, at the beginning of every emergency call, the caller's name and location information; (3) deliver to the PSAP, designated statewide default answering point, or appropriate local emergency authority, at the outset of the outbound leg of the call, at a minimum, the name of the relay user and location of the

emergency, as well as the name of the relay provider, the CA's callback number, and the CA's identification number, thereby enabling the PSAP, designated statewide default answering point, or appropriate local emergency authority to re-establish contact with the CA in the event the call is disconnected; and (4) in the event one or both legs of the call are disconnected, immediately re-establish contact with the TRS user and/or the appropriate PSAP, designated statewide default answering point, or appropriate local emergency authority and resume handling the call, when feasible. Finally, FCC 08–78 requires each Internet-based TRS provider to include an advisory on its web site and in any promotional materials directed to consumers, prominently and in plain language, explaining the circumstances under which emergency calls made via Internet-based TRS may be in some way limited by comparison to traditional E911 service.

28. To the extent that all Internet-based TRS providers, including small entities, will be eligible to receive compensation from the Interstate TRS Fund for their reasonable costs of complying with these emergency call handling and consumer notification requirements, the Commission finds that these requirements will not have a significant economic impact on a substantial number of small entities. The Commission also believes it is reasonable for Internet-based TRS providers to comply with these requirements by May 21, 2008 because based on the record in this proceeding, some providers have already implemented some of these measures. For instance, several providers assert that as long as the providers obtain location information from the calling party, they can route an emergency call to an appropriate PSAP based upon PSAP databases that are commercially available. The Commission infers that, if such voluntary steps had been unduly economically burdensome for small entities, such entities would not have undertaken them voluntarily. For all of these reasons, the Commission concludes that these measures will not have a significant economic impact on a substantial number of small businesses.

29. With regard to whether a substantial number of small entities may be affected by the requirements adopted in FCC 08–78, the Commission notes that, of the 11 providers affected by FCC 08–78, only three meet the definition of a small entity. The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consist of all such firms having 1,500 or fewer employees. 13 CFR 121.201, NAICS code 517110. According to Census Bureau data for 1997, there were 2,225 firms in this category which operated for the entire year. U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization),'' Table 5, NAICS code 513310 (issued October 2000). Of this total, 2,201 firms had employment of 999 or fewer employees, and an additional 24 firms had employment of 1,000 employees or more. Thus, under this size standard, the majority of firms can be considered small. (The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is ''Firms with 1,000 employees or more.'') Currently, eleven providers receive compensation from the Interstate TRS Fund for providing VRS, IP Relay and IP CTS: AT&T Corp.; Communication Access Center for the Deaf and Hard of Hearing, Inc.; GoAmerica; Hamilton Relay, Inc.; Hands On; Healinc; Nordia Inc.; Snap Telecommunications, Inc; Sorenson; Sprint; and Verizon. Because only three of the providers affected by FCC 08–78 are deemed to be small entities under the SBA's small business size standard, the Commission concludes that the number of small entities affected by its decision in FCC 08–78 is not substantial. Moreover, given that all affected providers, including the three that are deemed to be small entities under the SBA's standard, will be entitled to receive prompt reimbursement for their reasonable costs of compliance, the Commission concludes that FCC 08–78 will not have a significant economic impact on these small entities.

30. Therefore, for all of the reasons stated above, the Commission certifies that the requirements of FCC 08–78 will not have a significant economic impact on any small entities.

31. The Commission will send a copy of FCC 08–78, including a copy of this Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act. In addition, FCC 08–78 and this final certification will be sent to the Chief Counsel for Advocacy of the SBA.

Congressional Review Act

The Commission will send a copy of FCC 08–78 in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

Ordering Clauses

Pursuant to sections 1, 2, and 225 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, and 225, FCC 08–78 is adopted.

Pursuant to sections 1, 2, and 225 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, and 225, part 64 of the Commission's rules, 47 CFR part 64 is amended.

FCC 08–78 shall become effective May 21, 2008. The waivers of the emergency call handling requirement for VRS and IP Relay providers are extended until the effective date of FCC 08–78, and, along with the waiver for IP CTS providers, shall terminate on May 21, 2008.

The Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, shall send a copy of FCC 08–78, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 64

Individuals with disabilities, Telecommunications.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

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

Authority: 47 U.S.C. 154, 254 (k); secs. 403 (b)(2)(B), (c), Pub. L. 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 228, and 254(k) unless otherwise noted.

§§ 64.603 and 64.604 [Amended]

■ 2. Remove the internal cross-references to ''§ 64.605'' and add in its place ''§ 64.606'' in the following locations:

■ (a) 64.603(a)
■ (b) 64.603(b)
■ (c) 64.604(c)(5)(ii)
■ (d) 64.604(c)(5)(iii)(F)(1)
■ (e) 64.604(c)(5)(iii)(F)(4)
■ (f) 64.604(c)(6)(i)
■ (g) 64.604(c)(6)(iii)(B)

■ 3. Section 64.604 is amended by revising paragraph (a)(4) to read as follows:

§ 64.604 Mandatory Minimum Standards.

* * * * *

(a) * * *

(4) Emergency call handling requirements for TTY-based TRS providers. TTY-based TRS providers must use a system for incoming emergency calls that, at a minimum, automatically and immediately transfers the caller to an appropriate Public Safety Answering Point (PSAP). An appropriate PSAP is either a PSAP that the caller would have reached if he had dialed 911 directly, or a PSAP that is capable of enabling the dispatch of emergency services to the caller in an expeditious manner.

* * * * *

§§ 64.605 through 64.608 [Redesignated as §§ 64.606 through 64.609]

■ 4. Sections 64.605, 64.606, 64.607, and 64.608 are re-designated as §§ 64.606, 64.607, 64.608, and 64.609, and a new §§ 64.605 is added as follows:

§ 64.605 Additional Operational Standards Applicable to Internet-Based TRS Providers.

Each VRS, IP Relay, and IP CTS provider must accept and handle emergency calls and access, either directly or via a third party, a commercially available database that will allow the provider to determine an appropriate PSAP, designated statewide default answering point, or appropriate local emergency authority that corresponds to the caller's location, and to relay the call to that entity. The terms PSAP, statewide default answering point, and appropriate local emergency authority are defined in § 9.3 of this chapter. Each VRS, IP Relay, and IP CTS provider also is required to:

(a) Implement a system that ensures that the provider answers an incoming emergency call before other non-emergency calls (*i.e.*, prioritize emergency calls and move them to the top of the queue);

(b) Request, at the beginning of each emergency call, the caller's name and location information;

(c) Deliver to the PSAP, designated statewide default answering point, or appropriate local emergency authority, at the outset of the outbound leg of an emergency call, at a minimum, the name of the relay user and location of the emergency, as well as the name of the relay provider, the CA's callback number, and the CA's identification number, thereby enabling the PSAP, designated statewide default answering point, or appropriate local emergency authority to re-establish contact with the CA in the event the call is disconnected; and

(d) In the event one or both legs of an emergency call are disconnected (*i.e.*, either the call between the TRS user and the CA, or the outbound voice telephone call between the CA and the PSAP, designated statewide default answering point, or appropriate local emergency authority), immediately re-establish contact with the TRS user and/or the appropriate PSAP, designated statewide default answering point, or appropriate local emergency authority and resume handling the call, when feasible;

(e) Ensure that information obtained as a result of this section is limited to that needed to facilitate 911 services, is made available only to emergency call handlers and emergency response or law enforcement personnel, and is used for the sole purpose of ascertaining a customer's location in an emergency situation or for other emergency or law enforcement purposes.

* * * * *

§ 64.609 [Amended]

■ 5. In the text of the newly re-designated § 64.609, remove the internal cross-reference to ''§ § 64.606 and 64.607'' and add in its place ''§ § 64.607 and 64.608.''

[FR Doc. E8–8597 Filed 4–18–08; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 73, No. 77
Monday, April 21, 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 HOMELAND SECURITY

U.S. Immigration and Customs Enforcement

8 CFR Parts 103 and 214

[DHS No. ICEB–2008–0004]

RIN 1653–AA54

Adjusting Program Fees and Establishing Procedures for Out-of-Cycle Review and Recertification of Schools Certified by the Student and Exchange Visitor Program To Enroll F or M Nonimmigrant Students

AGENCY: U.S. Immigration and Customs Enforcement, DHS.

ACTION: Proposed rule.

SUMMARY: The Department of Homeland Security (DHS) is proposing to amend the Student and Exchange Visitor Program (SEVP) school certification petition fee and the application fee for nonimmigrants seeking to become academic (F visa) or vocational (M visa) students, or exchange visitors (J visa). This proposed rule would adjust the fees for schools seeking to admit F or M students; adjust the fees paid by individual F, M or J nonimmigrants; implement mandatory review of fees collected by SEVP; set the fee for submitting a school certification petition at $1700, plus $655 for each site; set the fee for each F or M student at $200; for most J exchange visitors at $180; and for exchange visitors seeking admission as au pairs, camp counselors, and summer work/travel program participants at $35. DHS proposes to make this rule effective at the beginning of fiscal year 2009, on October 1, 2008.

DHS proposes also to establish oversight and recertification of schools for attendance by F or M students. The proposed rule would establish procedures for schools to submit their recertification petitions, add a provision allowing a school to voluntarily withdraw from its certification, and clarify procedures for school operation with regard to F or M students during recertification and following a denial of recertification or a withdrawal of certification. Further, the proposed rule would remove obsolete provisions used prior to implementation of the Student and Exchange Visitor Information System (SEVIS), a Web-enabled database that provides current information on F, M and J nonimmigrants in the United States.

DATES: Comments must be submitted on or before June 20, 2008.

ADDRESSES: You may submit comments, which must be identified by DHS docket number ICEB–2008–0004, using one of the following methods:

Federal Rulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Office of Policy, U.S. Immigration and Customs Enforcement, U.S. Department of Homeland Security, 425 I St., NW., Room 7257, Washington, DC 20536.

Hand Delivery/Courier: The address for sending comments by hand delivery or courier is the same as that for submitting comments by mail. Contact telephone number is (202) 514–8693.

Facsimile: Comments may be submitted by facsimile at (866) 466–5370.

FOR FURTHER INFORMATION CONTACT: Louis Farrell, Director, Student and Exchange Visitor Program; U.S. Immigration and Customs Enforcement, Department of Homeland Security; Chester Arthur Building, 425 I St., NW., Suite 6034, Washington, DC 20536; telephone number (202) 305–2346. This is not a toll-free number. Program information can be found at *http://www.ice.gov/sevis/.*

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ABC Activity-based Costing
CBP U.S. Customs and Border Protection
CEU Compliance Enforcement Unit
CFO Chief Financial Officer
DHS Department of Homeland Security
DOS Department of State
DSO Designated school official
EBSVERA Enhanced Border Security and Visa Entry Reform Act of 2002, Public Law 107–173; May 14, 2002
FASAB Federal Accounting Standards Advisory Board
HSPD–2 Homeland Security Presidential Directive—2
ICE U.S. Immigration and Customs Enforcement
IIRIRA Illegal Immigration Reform and Immigrant Responsibility Act of 1996

INA Immigration and Nationality Act of 1952
INS Immigration and Naturalization Service
IRM Information Resources Management
IT information technology
NAICS North American Industry Classification System
NOIW Notice of Intent to Withdraw
OMB Office of Management and Budget
PDSO Principal designated school official
RFA Regulatory Flexibility Act
RFE Request for evidence
SBA Small Business Administration
SCB School Certification Branch
SEVIS Student and Exchange Visitor Information System
SEVP Student and Exchange Visitor Program
SFFAS FASAB Statement of Federal Financial Accounting Standard No 4: Managerial Cost Accounting Concepts and Standards for the Federal Government
SSA Social Security Administration
UMRA Unfunded Mandates Reform Act of 1995
USCIS U.S. Citizenship and Immigration Services

I. Public Participation

Interested persons are invited to comment on this rulemaking by submitting written data, views, or arguments on all aspects of the proposed rule. DHS invites comments related to the potential economic, environmental, or Federalism effects that might result from this proposed rule. Comments that will most assist DHS will reference a specific portion of this proposed rule and preamble by the identification number at the heading of the specific section being addressed. The reason for any recommended change should be explained. Data, information, and the authority that supports the recommended change should be included.

DHS has entered into the docket for this rulemaking the SEVP Fee Study, and Initial Regulatory Flexibility Act Analysis: Impact on Small Schools of the Change in Fees for Certification and Institution of Recertification by the Student and Exchange Visitor Program.

DHS welcomes comments on the information and analyses in these supporting documents. The budget methodology software used in computing the SEVIS fees is a commercial product licensed to SEVP, which may be accessed on-site by appointment by calling (202) 305–2346.

Instructions: All submissions received must include the agency name and Department of Homeland Security Docket No. ICEB–2008–0004. All comments received (including any personal information provided) will be posted without change to *http://www.regulations.gov.* See **ADDRESSES**, above, for methods to submit comments. Mailed submissions may be paper, disk, or CD–ROM.

Comments may be viewed online at *http://www.regulations.gov,* or in person at U.S. Immigration and Customs Enforcement, Department of Homeland Security, 425 I St., NW., Room 7257, Washington, DC 20536, by appointment.

II. Background

A. Student and Exchange Visitor Program Legal Authority and Requirements

Under section 101(a)(15)(F)(i) of the Immigration and Nationality Act of 1952, as amended (INA), 8 U.S.C. 1101(a)(15)(F)(i), a foreign student may be admitted into the United States in nonimmigrant status to attend an academic or language training school (F visa). Under section 101(a)(15)(M)(i) of the INA, 8 U.S.C. 1101(a)(15)(M)(i), a foreign student may be admitted into the United States in nonimmigrant status to attend a vocational education school (M visa). An F or M student may enroll in a particular school only if the Secretary of Homeland Security has certified the school for the attendance of F or M students. Under section 101(a)(15)(j) of the INA, 8 U.S.C. 1101(a)(15)(j), a foreign citizen may be admitted into the United States in nonimmigrant status as an exchange visitor (J visa) in an exchange program sponsored by the Department of State (DOS).

Section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Public Law 104–208, Div. C, 110 Stat. 3009–546 (September 30, 1996), authorized the creation of a program to collect current and ongoing information provided by schools and exchange visitor programs regarding F, M, or J nonimmigrants during the course of their stay in the United States, using electronic reporting technology to the fullest extent practicable. IIRIRA further authorized DHS to certify schools participating in F or M student enrollment.

The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107–56, 115 Stat. 272 (October 26, 2001), provided that alien date of entry and port of entry information be collected. On October 30, 2001, the President issued Homeland Security Presidential Directive No. 2 (HSPD–2) requiring DHS to conduct periodic, ongoing recertification of all schools certified to accept F or M students. 37 Weekly Comp. Pres. Docs. 1570, 1571–72 (October 29, 2001).

The Enhanced Border Security and Visa Entry Reform Act of 2002 (EBSVERA), Public Law 107–173, 116 Stat. 543 (May 14, 2002), 8 U.S.C. 1762, provided for DHS to recertify all schools approved for attendance by F or M students within two years of enactment. Further, EBSVERA provided that DHS conduct an additional recertification of these schools every two years thereafter. Data collection requirements for SEVP certification, oversight and recertification of schools authorized to enroll F or M students are not specified in legislation, but are enumerated by regulation. 8 CFR 214.3, 214.4.

This proposed rule would amend DHS regulations governing certification, oversight and recertification of schools by SEVP for attendance by F or M students. The proposed rule would establish procedures for schools to submit their recertification petitions, add a provision allowing a school to voluntarily withdraw from its certification, clarify procedures for school operation with regard to F or M students during recertification and following a withdrawal of certification, and remove obsolete provisions used prior to implementation of SEVIS. The proposed rule would adjust the SEVP certification fee and student application fee (I–901 SEVIS fee) to reflect existing operating costs, program requirements, and planned enhancements.

B. Student and Exchange Visitor Information System

SEVP administers SEVIS, a Web-based data entry, collection and reporting system. SEVIS provides authorized users access to reliable information on F, M and J nonimmigrants, and their dependents. DHS, DOS, and other government agencies, as well as SEVP-certified schools and DOS-designated exchange visitor programs, use SEVIS data.

Awareness of the information flow for F and M students is critical to understanding the use of SEVIS. A nonimmigrant must apply to an SEVP-certified school and be accepted for enrollment. From the information provided by the nonimmigrant, the school enters student information into SEVIS and issues a Form I–20, Certificate of Eligibility for Nonimmigrant Student Status. The nonimmigrant must submit an approved Form I–20 when applying for an F or M visa.

Similarly, a nonimmigrant must apply to a DOS-designated exchange visitor program and be accepted for enrollment as a basis for applying for a J exchange visitor visa. From the information provided by the nonimmigrant, the

exchange visitor program enters exchange visitor information into SEVIS and issues a Form DS–2019, Certificate of Eligibility for Exchange Visitor (J–1) Status. The nonimmigrant must submit an approved Form DS–2019 when applying for a J visa.

U.S. Customs and Border Protection (CBP) inspectors will enter data into DHS systems related to the F, M or J admission to the United States. These systems interface with SEVIS, providing SEVP with these data.

Certified schools and exchange visitor programs update information on their approved F, M and J nonimmigrants after the nonimmigrants' admission and during their stay in the United States.

The SEVIS database enables DHS and DOS to efficiently administer their approval (i.e., certification and designation, respectively) and oversight processes of schools and programs wishing to benefit from enrolling nonimmigrants. SEVIS assists law enforcement agencies in tracking and monitoring F, M and J nonimmigrant status and apprehending violators before they can potentially endanger the national security of the United States. SEVIS assists government benefit and service providers to better serve their F, M and J nonimmigrant applicants. Finally, SEVIS enables schools and exchange visitor programs to instantaneously transmit electronic information and changes in required information on F, M and J nonimmigrants to U.S. Immigration and Customs Enforcement (ICE) and DOS throughout their stay in the United States. These include required notifications, reports, and updates to personal data.

SEVIS data are used continually to qualify individuals applying for F, M and J status and to facilitate port of entry screening by CBP; to process benefit applications; to monitor nonimmigrant status maintenance; and, as needed, to facilitate timely removal.

C. Development of SEVP

On July 1, 2002, selected schools that had been previously approved to enroll F and M students began to receive preliminary certification in SEVIS. After September 25, 2002, all schools became eligible to petition for certification in SEVIS. By February 15, 2003, schools were required to be certified in SEVIS in order to be authorized to issue initial Forms I–20. As of August 1, 2003, schools and exchange visitor programs were required to enter all F, M and J nonimmigrant data into SEVIS.

As of February 1, 2008, SEVIS contained 1,016,029 active records on F, M, and J students and exchange visitor. More than 9,000 schools are currently SEVP-certified; more than 1,400 exchange visitor programs are DOS-designated.

SEVP levies two fees to recoup the cost of DHS and DOS program operations and services, as well as to maintain and enhance SEVIS. The fees include: The I–901 SEVIS fee for the registration of student and exchange visitor information in SEVIS, and the Certification Fee for schools and school systems to accept nonimmigrant students participating in the F and M visa programs.

On July 1, 2004, DHS promulgated a final rule that required the collection of information relating to F, M and J nonimmigrants and providing for the collection of the required fee to defray cost. 69 FR 39814. That rule provided for the collection of a fee to be paid by foreign citizens seeking nonimmigrant status as F or M students or J exchange visitors.

HSPD–2 requires DHS to conduct ongoing oversight and periodic recertification of all schools certified to accept F and/or M students. On September 25, 2002, the Department of Justice published an interim rule that implemented the certification process for schools to receive authorization to enroll F or M nonimmigrant students in SEVIS, including the fees charged for this service and the accompanying site visit. 67 FR 60107. This certification process includes an ongoing commitment by schools to maintain current and accurate records in SEVIS on their F and M students, as well as on their own operations.

Congress required DHS to recertify all schools approved for attendance by F or M students within two years of the passage of EBSVERA. EBSVERA section 502(a), 8 U.S.C. 1762(a). Congress also required that schools be recertified every two years to confirm that the schools remain eligible for certification and are in compliance with recordkeeping, retention and reporting requirements.

Funding for recertification will be provided by a portion of the I–901 SEVIS fee levied on F and M students.

In establishing the recertification process, SEVP conducted a detailed business process analysis to document the recertification business process; developed standard operating processes for recertification; developed cycle time measurements of the proposed processes; and estimated the level of effort required to conduct compliance reviews of certified schools. Based on this analysis, SEVP developed the projected cost for recertification.

III. Adjustment of SEVP Fees

A. Rationale for New Fee Schedule

The proposed amended fees are driven by two factors: The need to comply with statutory and regulatory requirements that SEVP review its fee structure every two years to ensure that the cost of the services that are provided are fully captured by fees assessed on those receiving the services; and the need to enhance SEVP capability to achieve its legislative goals to support national security and counter immigration fraud through the development and implementation of critical system and programmatic enhancements.

This proposed rule would establish a fee structure that incorporates the added cost of school recertification into the I–901 SEVIS fee that is paid by applicants for F and M status, allowing SEVP to capture the entire cost for activities related to recertification. The proposed rule would allow SEVP to fully fund activities and institute critical near-term program and system enhancements in a manner that fairly allocates cost and acknowledges defined performance goals.

B. SEVP Funding Authority

The Secretary is authorized to collect fees for SEVP from prospective F and M students and J exchange visitors. IIRIRA section 641(e)(1), as amended, 8 U.S.C. 1372(e)(1). Fees for specific classes of aliens were statutorily limited, but the Secretary was authorized to revise those fees. IIRIRA section 641(e)(4)(A), (g)(2), as amended, 8 U.S.C. 1372(e)(4)(A), (g)(2). These fees are deposited as offsetting receipts into the Immigration Examinations Fee Account and are available to the Secretary until expended for the purposes of the program. IIRIRA section 641(e)(4)(B), 8 U.S.C. 1372(e)(4)(B).

The Immigration Examination Fee Account, under INA section 286(m), 8 U.S.C. 1356(m), provides that the Secretary may collect fees at a level that would ensure recovery of the full costs of providing adjudication services, including the costs of providing similar services without charge to asylum applicants and certain other immigrants:

> Notwithstanding any other provisions of law, all adjudication fees as are designated by the [Secretary] in regulations shall be deposited as offsetting receipts into a separate account entitled ''Immigration Examinations Fee Account'' in the Treasury of the United States, * * *: Provided further, That fees for providing adjudication and naturalization services may be set at a level that will ensure recovery of the full costs of providing all such services, including the costs of similar services provided without

charge to asylum applicants or other immigrants. Such fees may also be set at a level that will recover any additional costs associated with the administration of the fees collected.

Under this authority, user fees are employed, not only for the benefit of the payer of the fee and any collateral benefit resulting to the public, but also provide a benefit to certain others, particularly asylum applicants and refugees and others whose fees are waived. The fees proposed in this rule would not fund any support for asylum applicants or refugees, but would support specific sets of reduced fee and fee-exempt exchange visitors.

The Secretary is required to certify schools for participation in SEVIS and authorization to enroll F and M students. INA section 101(a)(15)(F)(i), (M)(i), 8 U.S.C. 1101(a)(15)(F)(i), (M)(i). The Secretary charges a fee for this adjudication and approval under the Immigration Examinations Fee Account. INA section 286(m), 8 U.S.C. 1356(m).

The Secretary is also required to review and recertify schools biennially. EBSVERA section 502(a), 8 U.S.C. 1762(a). The Secretary must charge a fee for this service under the Immigration Examinations Fee Account. INA section 286(m), 8 U.S.C. 1356(m). The Secretary would recover the costs of recertification in this proposed rule from the students who are benefited by the recertification.

In developing fees and fee rules, DHS looks to a range of governmental accounting provisions. The Office of Management and Budget (OMB) Circular A–25, User Charges (revised), section 6, 58 FR 38142 (July 15, 1993) defines ''full cost'' to include all direct and indirect cost to any part of the Federal government for providing a good, resource, or service. These costs include, but are not limited to, an appropriate share of: direct and indirect personnel cost; physical overhead; consulting and other indirect cost; management and supervisory cost; enforcement; information collection and research; and establishment of standards and regulation, including any required environmental impact statements.

OMB Circular A–11, Preparation, Submission and Execution of the Budget, section 31.12, July 2, 2007, directs agencies to develop user charge estimates based on the full cost recovery policy set forth in OMB Circular A–25, User Charges (budget formulation and execution policy regarding user fees).

The Federal Accounting Standards Advisory Board (FASAB) Statement of Federal Financial Accounting Standards (SFFAS) No. 4: Managerial Cost Accounting Concepts and Standards for the Federal Government, July 31, 1995, provides the standards regarding managerial cost accounting and full cost. SFFAS No. 4 defines ''full cost'' to include ''direct and indirect costs that contribute to the output, regardless of funding sources.'' FASAB identifies various classifications of cost to be included and recommends various methods of cost assignment to identify full cost. Activity-based costing (ABC) is highlighted as a costing methodology useful to determine full cost within an agency.

The Chief Financial Officers Act of 1990, 31 U.S.C. 901–903, requires each agency's Chief Financial Officer (CFO) to ''review, on a biennial basis, the fees, royalties, rents and other charges imposed by the agency for services and things of value it provides, and make recommendations on revising those charges to reflect cost incurred by it in providing those services and things of value.'' 31 U.S.C. 902(a)(8).

This proposed rule reflects the recommendations made by the CFO. This proposed rule proposes increased funding that supports new initiatives critical to improving homeland security; funds operations to comply with statutory requirements to implement school recertification, and reflects the implementation of specific cost allocation methods to segment program cost to the appropriate fee, either F and M students or schools, to ensure compliance with the legal framework for fee setting.

C. SEVP Baseline Costs and Fees

SEVP certifies schools to enroll F and M students; administers, maintains, and develops SEVIS; collects fees from F and M students, J exchange visitors, and schools; adjudicates certification appeals; and provides overall guidance to schools regarding program enrollment and compliance, as well as the use of SEVIS. These activities are funded solely through the collection of fees.

The I–901 SEVIS fee, collected from students and exchange visitors, funds: the operation of SEVP; the cost of administering, maintaining, and developing SEVIS; the cost of school recertification; and all activities related to individual and organizational compliance issues within the jurisdiction of SEVP. Individual and organizational compliance includes funding the cost of investigations of compliance issues related to schools participating in SEVP and exchange visitor programs, as well as F, M, or J nonimmigrants where potential threats to national security are identified, where immigration violation or fraud is suspected, or both.

The Certification Fee is paid by schools that petition for the authority to issue Forms I–20 to prospective nonimmigrant students for the purpose of enrolling them in F or M visa status. These monies fund the base internal cost for SEVP to process and adjudicate the initial school certification petition (Form I–17, Petition for Approval of School for Attendance by Nonimmigrant Student).

SEVP expects to receive and Congress has approved expenditure for $56.2 million in student and certification fees in FY 2008. Budget of the United States, FY2008, Appendix: Detailed Budget Estimates, at 459 (2007); Pub. L. 110–161, Div. E, 121 Stat. 1844 (2007). SEVP has requested $119.58 million in expenditure authority for FY 2009. Budget of the United States, FY2009, Appendix: Detailed Budget Estimates, at 490 (2008).

The I–901 SEVIS fee and school certification fee were initially set when they were established in 2002 and have not been adjusted since that time.

D. Methodology

SEVP captured and allocated cost utilizing an ABC approach to define full cost, outline the sources of SEVP cost and define the fees. The ABC approach also provides detailed information on the cost and activities allocated to each fee.

1. Activity-Based Costing Approach

SEVP used BusinessObjects Metify ABM Solo Edition, version 3.0.1, build 1277, ABC modeling software to determine the full cost associated with updating and maintaining SEVIS to collect and maintain information on F, M, and J nonimmigrants; certifying schools; overseeing school compliance; recertifying schools; adjudicating appeals; investigating suspected violations of immigration law and other potential threats to national security by F, M, or J nonimmigrants; providing outreach and education to users; and performing regulatory and policy analysis. The model was also used to identify management and overhead cost associated with the program.

ABC is a business management methodology that relates inputs (cost) and outputs (products and services) by quantifying how work is performed in an organization (activities). The ABC methodology provides a way for fee-funded organizations to trace the cost of the provided services and to calculate an appropriate fee for the service, based on the cost of activities that are associated with the services for which the fee is levied.

Using the ABC methodology, SEVP identified and defined the activities needed to support SEVP functions, to include those of current and future initiatives; captured the full resource cost and apportioned it to the appropriate activity; and assigned the cost to the appropriate fee category, based on the nature of the activity.

SEVP used an independent contractor and commercially available ABC software to compute the fees. The structure of the software was tailored to SEVP needs for continual and real-time fee review and cost management.

2. Full Cost

A critical element in building the ABC model for SEVP was to identify the sources and cost for all elements of the program. Legislative and regulatory guidance requires that the SEVP fees recoup the full cost of providing its resources and services, including, but not limited to, an appropriate share of: direct and indirect personnel cost, including salaries and fringe benefits, such as medical insurance and retirement; retirement cost, including all (funded or unfunded) accrued cost not covered by employee contributions, as specified in OMB Circular A–11; overhead, consulting, and other indirect cost, including material and supply cost, utilities, insurance, travel, as well as rents or imputed rents on land, buildings, and equipment; management and supervisory cost; and cost of enforcement, collection, research, establishment of standards, and regulation.

To the extent applicable, SEVP used the cost accounting concepts and standards recommended in the FASAB ''Statement of Financial Accounting Standards Number 4, Managerial Cost Accounting Concepts and Standards for the Federal Government'' (1996). FASAB Standard Number 4 sets the following five standards as fundamental elements of managerial cost accounting: accumulate and report cost of activities on a regular basis for management information purposes; define responsibility segments and report the cost of each segment's outputs; report the full cost of outputs (full cost includes resources that directly or indirectly contribute to the output and supporting services within the entity and from other entities); include full-cost, inter-entity cost, significant and material items provided by all Federal entities; and use appropriate costing methodologies to accumulate and assign cost to output.

3. Cost Basis for SEVP Fees Based on Current Services

The FY 2009 budget provides the cost basis for the fees. The FY 2009 budget reflects the required revenue to sustain current initiatives and to fund program enhancements: the implementation of SEVIS II, enhanced enforcement capability, the expansion of school liaison activity, and recertification.

Determining the projected cost for the current efforts involved routine U.S. budget projection methodology. The U.S. budget establishes the current services of the program and projects the mandatory and inflation-based adjustments necessary to maintain current services. The budget adjusts the current services to include enhancements to reflect program policy decisions. Table 1 reflects the fiscal year 2007 final budget, the FY 2008 President's request, and the FY 2009 program budget.

TABLE 1.—STUDENT AND EXCHANGE VISITOR PROGRAM SUMMARY OF REQUIREMENTS BY ORGANIZATION AND PROGRAM CATEGORY

[Dollars in thousands]

Organization	2007 spend plan	2008 spend plan	2009 spend plan	2008–2009 change
SEVP Management	6,785	2,586	8,639	6,053
School Certification Branch	1,320	1,519	3,330	1,811
Information Technology Branch	1,060	1,194	1,276	82
SEVP Liaison Branch	365	684	4,737	4,053
Policy Branch	251	618	647	29
Mission Support Branch	480	667	757	90
Office of the Principal Legal Advisor	113	157	176	19
Total	10,374	7,425	19,562	12,137
Contractors	7,991	12,954	9,063	(3,891)
Program Expenses				
CEU	12,256	12,682	44,597	31,915
SEVIS II*	.....	.....	25,100	25,100
Office of the Chief Information Officer	2,003	2,162	2,465	303
SEVIS (IRM)	17,683	16,235	13,593	(2,642)
DOS	509	470	511	41
SEVIS Security	672	698	500	(198)
Department of the Treasury	2,857	3,526	3,689	163
Total, SEVP	54,345	56,153	119,580	63,427
Carry-forward				
SEVIS II	.....	12,500	.....	(12,500)
CEU	.....	5,600	.....	(5,600)
Total Carry-forward	.....	18,100	.....	(18,100)
Total, SEVP	54,345	74,253	119,580	45,327
Full Time Equivalent Personnel	121	135	274	139

The program budget funds are expended to support personnel costs, required travel to support the program, and for other objects, which are reflected in Table 2.

TABLE 2.—STUDENT AND EXCHANGE VISITOR PROGRAM SUMMARY OF REQUIREMENTS BY PROGRAM AND OBJECT CLASS

[Dollars in thousands]

Object classes	2007 End of Year budget	2008 President's budget	2009 President's request	2008–2009 Change
Total Full-Time Equivalent personnel compensation	7,239	7,479	24,239	16,760
Other personnel compensation	81	84	254	170
Benefits	3,511	3,628	7,841	4,213
Travel	448	463	1,437	974
Transportation of materiel	10	10	17	7
General Services Administration rent	10	10	17	7
Other rent	235	243	406	163
Communications, rent & misc. charges	609	629	1,084	455
Advisory & Assistance Services	7,468	7,763	13,958	6,195
Other services	7,471	7,719	10,623	2,904
Purchase from Government Accounts	509	526	907	381
Operations & maintenance of equipment	16,460	17,006	20,116	4,110
Supplies & Materials	645	667	1,150	483
Equipment	9,438	9,751	37,098	29,347
Land & Structures	215	222	383	161
Total, SEVP	54,349	56,200	119,530	66,380
Full Time equivalents	121	135	261	126

4. Enhancements

In developing this proposed rule, SEVP reviewed its recent costs and conducted a comprehensive feasibility study that identified goals for services and projected future workload analyses, allocating costs to specific services. Specifically, the increased fees described in this proposed rule would fund: development of SEVIS II, the next generation of critical systems infrastructure; acquisition of additional Compliance Enforcement Unit (CEU) personnel; implementation of recertification and improved oversight; and additions to outreach and liaison activities with the academic community.

a. SEVIS II

SEVIS became fully operational in February of 2003. It is a Web-enabled database that gives schools and program sponsors the capability to transmit information and event notifications about F, M and J nonimmigrants electronically to DHS and DOS throughout their nonimmigrant stay in the United States.

Today, SEVIS has evolved well beyond its original, limited purpose as a tracking tool. SEVIS is a critical national security component, a primary resource for conducting counterterrorism and/or counterintelligence threat analysis by the law enforcement and intelligence communities. These national security attributes were not fully envisioned or initially developed into the original design of SEVIS. Two primary law enforcement/intelligence users of SEVIS are the Foreign Terrorist Tracking Task Force and the CEU.

These new demands, along with ongoing concerns of the school and exchange visitor sponsor communities, have been accommodated by the creation of software updates and enhancements. The number of system revisions that were made total in the thousands. While SEVIS has adapted through upgrades and patches, SEVIS end-users still face limitations in searching, sorting, and exporting data, as well as in producing needed management reports. Data integrity concerns (due to time lags, system constraints, and/or system design limitations) continue to impact all SEVIS users.

SEVP began a comprehensive feasibility study in January 2007 to determine and compare the viability of two options: to continue with SEVIS as it is currently, relying on upgrades; or, to develop a next generation system. Through intensive discussion with stakeholders, this study identified vulnerabilities of the existing SEVIS database and, additionally, identified the need to shift the focus from the original intent of SEVIS to simply track documents to the more useful tracking of individuals. Tracking individuals presents a paradigm shift, both in the focus and use of SEVIS. Stakeholders indicated that the current design infrastructure creates a high probability of an individual having numerous distinct and unassociated records within the system, making it almost impossible to comprehensively track all activities associated with a single individual.

Stakeholders stated that the current SEVIS configuration presented national security vulnerabilities that could not be eliminated by simply altering or upgrading the current system and echoed the need for a new system. SEVIS II, the next generation of software, is necessary to more adequately perform and sustain mission-critical functions that evolved in the use of SEVIS, but for which the system was not designed.

Building on the guidance provided by the feasibility study, detailed requirements working sessions were conducted with both external (i.e., schools and programs) and internal (i.e., Federal law enforcement and intelligence communities) stakeholders. The purpose of these working sessions was to gain more precision and detail for SEVIS II that would: convert from a system that is centered on paper forms to a real-time, automated system that is person-centric, incorporating electronic forms (i.e., e-forms); greatly enhance the ability to search the system, increase efficiency, and decrease risk of user error; employ the Fingerprint Identification Number as the biometric identifier to accurately and rapidly

match records to specific aliens (i.e., one alien, one record); and use the current DHS enterprise architecture structure to create a system that integrates well with existing systems throughout the government and that is open, flexible, and scalable. Such interoperability with other government systems would better provide critical, real-time national security information and enhance the capability beyond that of SEVIS I to determine changes of academic majors and identify academic courses that are of national security interest.

While the mission for each stakeholder group varies, the participants of the SEVIS II functional workshops agreed unanimously in the prioritization of design elements, including development of the unique identifier to make student lifecycle information readily accessible by searching under a single identification. Additionally, U.S. Citizenship and Immigration Service's (USCIS's) Enumeration Service would increase the capability to share SEVIS data and improve analytical capabilities throughout the immigration and law enforcement community. Event driven workflow would reduce the probability that students and exchange visitors who are associated with ''at risk'' activities would be overlooked, and would enhance the current SEVIS I capability to determine when changes of academic majors might be of national security interest. Data management would provide the ability for end-users to extract required information from a single source. Finally, the use of electronic forms would create real-time availability for all specified roles and permissions, reducing the potential for nonimmigrants to perpetrate fraudulent activity.

The proposed system, planned for implementation in FY2009, would greatly enhance the capability of DHS to identify and reduce national security threats; reduce the possibility for errors or abuses of status by prospective and approved F, M and J nonimmigrants, as well as their schools and programs; and better provide updated, correct, real-time information to academic, law enforcement, and other government users. SEVIS II would be the main repository of record.

SEVP projects that the cost for developing and deploying SEVIS II would be $40.9 million. SEVP would incur $15.3 million of that cost in FY 2007 and FY 2008. To complete the systems development and to transition and migrate data from SEVIS I to SEVIS II, SEVP would need $25.6 million in FY 2009.

b. Additional CEU Personnel

SEVP and SEVIS were initiated in the post-9/11 era, when the necessity for a fully functioning monitoring system was made apparent by the identification of many of the involved terrorists with misuse or abuse of nonimmigrant status. The immigration system was again challenged five years later, when eleven Egyptian students scheduled to attend a summer program, failed to report to the school under which they were admitted. Fortunately, in this instance, nothing developed from subsequent investigation to indicate that a terrorist attack had been intended. However, had the intent been to create a national threat, the availability of SEVIS, the training of the respective school officials, and the involvement of CEU personnel worked to reasonably ensure that such a threat would not have succeeded. All eleven of these nonimmigrants were located within days of their failure to properly report and detained. A dedicated compliance enforcement program that includes criminal investigative efforts has been and continues to be employed to ensure the success of SEVP.

The CEU is able to investigate only the highest priority leads identified by analysis of SEVIS data at present. Additional CEU personnel would be used to investigate administrative and criminal violations related to individual students and SEVP-certified schools. To the extent that adequate resources are allocated and employed for this purpose, increased CEU staffing levels would reduce the vulnerability of the United States to future terrorist attacks and the exploitation of the student and exchange visitor programs.

Compliance enforcement program and criminal investigative efforts are helping to ensure the success of SEVP. The goal of ICE compliance efforts is to achieve 100% compliance with F, M, and J nonimmigrant regulations, to ensure that the institutions responsible for participating in these programs are in compliance, and to prohibit any abuse of SEVIS for criminal purposes. By ensuring the integrity of SEVIS through consistent and expanded enforcement efforts, the viability of the F, M, and J student and exchange visitor programs within the United States would be maintained.

The current number of enforcement positions funded by SEVP fees is inadequate. Accordingly, ICE does not have the needed personnel to resolve all of the national security priority leads generated in SEVIS that the CEU refers to its field offices. ICE does not receive appropriated funds for these purposes and has utilized I–901 SEVIS fees for these costs. The number of additional positions required to conduct SEVP enforcement was calculated using data gathered from compliance enforcement statistics from June 2003, to the present. The resource projection took into account the average time required to complete a compliance investigation and the average number of priority leads referred to ICE field offices annually. The cases used for these projections include administrative investigations of F, M and J status violators, as well as criminal investigations into individuals and organizations that have sought to exploit SEVIS for illicit purposes.

ICE resource projections indicate the need to hire additional Special Agents to conduct these investigations. ICE has determined that 121 special agents are required. Based on established workforce management ratios, additional Supervisory Special Agents, Investigative Assistants, Intelligence Research Specialists, and Program Managers are also required to support the additional Special Agent positions. CEU collects detailed data during the course of investigations that capture the amount of time needed and personnel utilized when pursuing an SEVP-related investigation. CEU also collects data on each type of investigation. Using the historical data for SEVP-related investigations, CEU projected the need for 155 new positions, including logistical support, as follows: 75 additional special agents to investigate potential SEVP student and exchange visitor violators; 46 special agents to conduct criminal investigations of schools and programs; 10 supervisory special agents in the field; 10 investigative assistants and 10 intelligence research specialists to support field investigations; and 4 special agent program managers for headquarters.

c. Recertification

The EBSVERA provided that DHS conduct a recertification of SEVP-certified schools every two years. SEVP recertification is a review of a school previously SEVP-certified to affirm that the school remains eligible and is complying with regulatory recordkeeping, retention, reporting and other requirements. The purpose, focus, and process of recertification are addressed in section IV of this proposed rule.

The cost of recertification is incorporated in the I–901 SEVIS fee. To project the cost for recertification in FY 2009 and FY 2010, SEVP conducted a bottom-up analysis using cycle time and business process analysis. It forecast

assumptions to project the total workload capacity needed for recertification and the resulting resource requirements.

d. School Liaison Activity

School liaison positions, originally proposed in the initial fee rule in 2004, were not developed. SEVP did not designate specific, co-located staff for this function but has instead relied upon its headquarters staff to conduct an aggressive outreach program, coupled with targeted training opportunities, to inform and educate its stakeholders. This approach can be credited for the high degree of compliance that was achieved by the schools that were randomly selected to participate in the data validation study conducted by SEVP in 2006. That study was recently given national acclaim by DHS as a benchmark for providing customer service.

In 2005–06, the Department of Education listed 4,216 schools of higher education as eligible to issue diplomas to students. By 2005, 86% or 3,657 of these schools were also SEVP-certified. As market saturation is reached in this category, new petitioners for SEVP certification are typically small schools. Since 2005, 80% of new petitions for SEVP certification were from schools that meet the Small Business Administration (SBA) definition of ''small business''. Such schools often enroll fewer F and/or M students. Consequently, school officials at such schools often have fewer training resources and opportunities to practice SEVIS skills and knowledge.

Moving forward in its planning for recertification and out-of-cycle reviews, SEVP is committed to assuring that those schools which apply for certification are given the resources and tools to remain compliant. Should out-of-cycle and recertification reviews reveal anomalies in either student or school records, SEVP would identify solutions and work with the affected schools to enhance their knowledge of SEVP regulations and their ability to work within the SEVIS environment.

An expanded liaison function would give SEVP the resources to continue providing stakeholders with high caliber information and educational materials, plus opportunities to enhance ongoing and future initiatives, such as recertification and the implementation of SEVIS II. Increased resources would be used, specifically, to work with those SEVP-certified schools that are identified during out-of-cycle reviews with reporting anomalies. Training and increased oversight, targeted to ensure the school's compliance and continued certification, would foster SEVP-school liaison and promote interaction.

The projected cost for expanding school liaison activity is equivalent to adding 64 new personnel positions.

E. Summary of the Full Cost Information for FY 2009

The total cost projection for FY 2009 is $119,580,000. Table 3 sets out the projected current services for SEVP and supporting CEU personnel in FY 2009 ($56.9 million). These costs are direct extensions of the FY 2007 costs that are supported by the current fees. Table 3 also summarizes the enhancements for SEVIS II, additional CEU law enforcement and supporting personnel, the recertification process, and school liaison activities.

TABLE 3.—FY 2009 SEVP COST BY INITIATIVE

Program cost by initiative	FY 2009 budgeted cost (millions)
Program Base:	
SEVP (current operational level)	$35.23
CEU (current operational level)	21.67
Subtotal	56.90
Enhancements:	
SEVIS II	25.60
Additional CEU Personnel	26.78
Recertification	3.24
School Liaison	7.06
Subtotal	62.68
Total	119.58

1. Fee Allocation

The purpose of the ABC methodology is to be able trace cost to organizational elements, as well as to be able to identify all cost components associated with the goods and services offered. For fee-based organizations such as SEVP, this allows the assignment of cost to one or more fees.

SEVP defined two fee categories: the I–901 SEVIS fee and the Certification fee.

SEVP considered the creation of additional fee categories in deciding how to apportion fees. For example, SEVP considered charging a separate I–901 SEVIS Fee to F, M, and J dependents. SEVP also examined various tiered fee structures. SEVP considered assigning some specific costs (e.g., Form I–515 processing, data fixes, and appeals) to separate fees. The ABC fee model allowed SEVP to evaluate these scenarios. ICE opted for a fee structure with fewer fees and, as a consequence, lower overhead (based on the increased cost of collecting fees, combined with the marginal impact on the two fees).

I–901 SEVIS Fee. Recovers the systems cost for SEVIS and a portion of the SEVP administrative cost, including the cost of recertification (recovers the full cost to process school recertification applications, including compliance cost directly related to the application process, as well as a portion of SEVP administrative cost), program compliance and enforcement. The fee would be apportioned between three categories—full fee of $200 for F and M students, reduced fee of $180 for most J participants (excluding the costs for recertification) and the further reduced fee of $35 for certain J program participants. Government-sponsored J program participants are fee-exempt by law.

Certification Fee. Recovers the full cost to process initial school

certification applications and a portion of SEVP administrative cost.

2. SEVP FY 2009 Cost Model Results

Tables 4 and 5 show the summary of SEVP FY 2009 cost by source of cost and by program cost by initiative. Tables 4 and 5 provide summary level model results. Those interested in accessing the model to see more detailed information can contact SEVP at (202) 305–2346 to make an appointment. The ABC modeling software is a commercial product licensed to SEVP.

TABLE 4.—TOTAL SEVP FY 2009 COST BY FEE CATEGORY

SEVP ABC model output category	FY 2009 budgeted cost (millions)
I–901 SEVIS fee	$117.91
Certification	1.67
Total	119.58

Table 5 shows a more detailed cost breakdown. The numbers are shown in thousands, rather than millions, of dollars due to the level of detail. There are three levels for some costs: process, activity, and sub-activity. Other costs have only two levels of detail. To simplify the presentation, the numbers are rounded to the nearest thousand. These numbers are not rounded in the costing model.

TABLE 5.—SEVP ACTIVITY COST BY FEE CATEGORY

[$ in thousands]

Process	Activity	Sub-activity	I–901 SEVIS fee	School certification fee
Direct Assignment	Pass through cost—Site Visit Contracts			543
Compliance Enforcement	CEU Operations	Access SEVIS data for investigative leads.	442	
		Analyze SEVIS data to identify potential status violators pursuant to the INA.	3,136	
		Assign viable leads to ICE Special Agent in Charge offices for further investigation and enforcement action if required.	249	
		Determine quality of SEVIS lead	634	
	CEU Programs	Act as a liaison with the law enforcement and intelligence communities concerning SEVIS data and provide expertise in dealing with student investigations and enforcement.	100	
		Assess vulnerabilities in SEVIS that can be exploited to misuse the system or otherwise violate law.	292	
		Perform alien flight student program duties.	100	
		Perform budget formulation duties	100	
		Perform school certification and regulatory compliance.	82	18
		Provide enforcement related training to field personnel with respect to the use of SEVIS.	50	
		Provide input to policy and regulatory changes affecting enforcement and national security.	292	
		Provide programmatic oversight	100	
	Investigations	Perform Fraud Investigations (I–17)	11,256	
		Perform Student Investigations (I–901)	31,595	
CEU Liaison	Coordinate SEVIS data to enhance field investigations		9	
	Interface with schools to provide initial contact prior to CEU involvement		9	
	Provide liaison support to CEU for other SEVP leads		9	
	Provide liaison support to CEU regarding possible leads from SEVIS		36	
Case Resolution Unit: Resolve Issues for Fee Payments.	Access Government Lockbox queues		13	
	Administer SEVIS FMJ fee e-mail		104	
	Answer phone queries on I–901 SEVIS fee payment issues		29	
	Process credit card charge backs		7	
	Process fee payment transfer requests		2	
	Process refund requests		27	
	Process returned checks		0	
	Work with U.S. Bank and Treasury to enhance I–901 system		13	
	Work with U.S. Bank Government Lockbox to resolve fee payment issues		2	
Department of State	Develop exchange visitor policy and regulations		102	
	Monitor complaints		102	
	Perform exchange visitor program redesignations		102	
	Receive review and determine status of exchange visitor program applications		102	
	Review change of status applications		102	
I–515 Operations	Close out I–515 case		100	

TABLE 5.—SEVP ACTIVITY COST BY FEE CATEGORY—Continued

[$ in thousands]

Process	Activity	Sub-activity	I–901 SEVIS fee	School certification fee
	Coordinate with external organizations		45	.....
	Document and research I–515 case		94	.....
	Provide I–515 program management		165	.....
Information Technology	Maintain and update SEVIS	Coordinate and monitor system performance.	1,124	.....
			2,175	.....
		Identify and define new system requirements.		
		Manage system security	1,803	.....
		Modify and enhance SEVIS interface and functionality (design and development).	31,420	.....
		Monitor and manage Help Desk Team performance.	443	.....
		Provide system testing and release readiness reviews.	719	.....
		Resolve errors in system data	888	.....
	Other IT Support	Administer SEVIS Toolbox	98	4
		Liaison with Chief Information Officer other system owners, the Federal Bureau of Investigation, etc.	754	32
		Manage IT contracts	136	.....
		Perform ad hoc IT projects	820	35
		Perform procurement activities	39	2
		Provide general IT support to SEVP office.	43	2
	Provide Help Desk Support	Contact customer to convey ticket resolution.	270	.....
		Document ticket resolution and provide daily and weekly statuses.	140	.....
		Handle ticket escalations	140	.....
		Log initial help desk ticket	1,062	.....
		Perform research to resolve ticket	2,159	.....
Policy and Planning	Policy development and analysis	Develop strategic plan	66	.....
		Draft implement and support plans and procedures.	110	.....
		Maintain forms	21	.....
		Perform record retention and disposition.	15	.....
		Prepare and update policies procedures, frequently asked questions, regulations, and Fact Sheets.	354	.....
		Provide guidance on SEVP policy issues.	338	.....
		Provide liaison support to SEVP internal and external stakeholders, to include teleconferences and working groups.	139	.....
		Provide review and answers to SEVIS source e-mail site and inquiries.	122	.....
		Publish rules and FR notices	234	.....
		Respond and comment on pending legislation.	110	.....
	Provide Liaison Support to Federal partners.	Coordinate Federal partner/SEVP interactions with other government organizations.	29	.....
			77	.....
		Coordinate Federal partner/SEVP interactions with other government organizations.		
		Coordinate policies and procedures with Federal partners.	119	.....
	Provide Social Security Administration (SSA) Liaison Support.	Provide SSA Liaison Support	7	.....
Program Analysis	Analyze SEVP/SEVIS data and processes		211	9
	Collect data for analysis and reporting		151	6
	Prepare reports		118	5

TABLE 5.—SEVP ACTIVITY COST BY FEE CATEGORY—Continued

[$ in thousands]

Process	Activity	Sub-activity	I–901 SEVIS fee	School certification fee
Resource Management	Manage Financial Resources	Formulate and execute budget	198	8
		Manage financial systems (Travel Manager, Federal Financial Management System, Electronic System for Personnel).	84	4
		Manage travel/purchase card	70	3
		Perform Contracting Officer's Technical Representative duties.	34	1
		Perform revenue analysis	68	3
		Prepare and monitor 5-year spend plans.	102	4
		Prepare and respond to audit requests.	28	1
		Prepare bi-annual fee review	128	5
		Provide program logistics	32	1
	Manage Personnel Resources	Manage payroll issues	106	4
		Manage position description	95	4
		Perform personnel actions (SF–521)	3	0
		Prepare and execute hiring plans	160	7
		Provide Human Resources Division and Security relevant personnel data.	46	2
	Pass through cost—Treasury Fee Collection.	Pass through cost—Treasury Fee Collection.	3,689	
School Certification and Recertification	Perform initial school certification	Perform certification—approvals		307
		Perform certification—denials		388
	Perform other School Group activities	Monitor school compliance	3,060	
		Process and adjudicate appeals	992	212
		Process and adjudicate motions	45	10
		Process and adjudicate petition updates.	791	
	Perform school recertifications	Perform recertification—approvals	1,114	
		Perform recertification—denials	1,010	
		Perform student notifications	640	
		Withdraw schools from SEVIS	539	
School Liaison	Develop Liaison Program		383	
	Implement Liaison Program		402	
	Perform school liaison functions		1,946	
SEVP Administrative Support	Answer the main telephone line		82	3
	Liaison with service providers for copier maintenance, DHL/FedEx mail, cell phones, blackberries, etc.		30	1
	Maintain SEVP supplies and materials		66	3
	Manage executive correspondence		88	4
	Process time and attendance/travel vouchers		25	1
	Provide administrative support for special projects		132	6
SEVP Management	Coordinate with internal and external stakeholders		156	7
	Oversee process improvements		160	7
	Provide program oversight		476	20
Training and Outreach	Develop and deliver SEVIS training	Deliver training	2,126	
		Develop training plans based on requirements.	236	
		Develop training requirements for designated school officials, responsible officers, immigration inspectors, DOS, etc.	203	
	Develop and implement	Attend and prepare conferences/workshops related to the SEVIS community.	1,147	
	SEVIS communication strategy	Contact and educate student organizations, associations, embassies, Congressional staffers, etc.	236	
		Develop and provide rollout plans	77	
		Facilitate SEVIS problem resolution	132	
		Monitor and enhance SEVIS source Web-site.	248	
		Prepare and distribute quarterly newsletter.	129	

TABLE 5.—SEVP ACTIVITY COST BY FEE CATEGORY—Continued

[$ in thousands]

Process	Activity	Sub-activity	I–901 SEVIS fee	School certification fee
		Provide Webinars	129	.....
		Respond to Public Affairs and Congressional Inquiries.	210	.....
Total			117,907	1,673

3. Fee Calculations

The cost model provides detailed cost information by activity and a summary cost for each, giving the aggregate fee cost by category. Next, SEVP projected the total number of fee payments of each type for FY 2009 and determined the fee-recoverable budget—the full cost of the service minus any offsets. Offsets include such costs as pass through cost for contractors or appropriated funding.

SEVP selected a forecasting approach to determine the total number of expected fee payments for each fee.

a. I–901 SEVIS Fee

To calculate a fee amount for the I–901 SEVIS Fee, SEVP estimated the number of fee payments expected in FY 2009 for each of the four fee payment levels: fee-exempt, reduced fee, full fee for J participants (excluding the cost for recertification of F and M certified schools), and full fee for F and M students (including recertification costs).

The legislation exempted government-sponsored J–1 exchange visitors from the fee payment when the fee was initially provided for in section 641 of IIRIRA. All other F, M and J nonimmigrants were to pay $100. An additional modification was made by Congress establishing the reduced fee of $35 for au pairs, camp counselors, or participants in a summer work travel program. Public Law 106–553, App. B, sec. 110, 114 Stat. 2762, 2762A–51, 2762A–68 (Dec. 21, 2000). IIRIRA also provided for revising the fee once the program to collect information was expanded to include all F, M, and J nonimmigrants, to take into account the actual cost of carrying out the program. As a result, SEVP needed to forecast the number of prospective F, M and J nonimmigrants in FY 2009, with a breakout of J exchange visitors by exchange visitor category.

After determining the number of expected I–901 SEVIS fee payments in FY 2009, SEVP calculated the I–901 SEVIS fee.

There are only two complete years of I–901 SEVIS fee payment data available for projecting the fee demand. Because these data are not sufficient to make a reliable projection of future demand with any degree of statistical accuracy, SEVP developed a surrogate for historical I–901 SEVIS fee payment data, based on visa issuance data from DOS.

While the number of F, M and J nonimmigrant visas issued does not equal the number of I–901 SEVIS fee payments, there is a correlation between the two numbers. Table 6 reflects the change in the numbers of visas issued to provide the trend data needed to project the growth in I–901 SEVIS fee payments.

TABLE 6.—F, M, AND J VISA ISSUANCE DATA 1997–2006 ISSUED VISAS*

Fiscal year	Total	Growth rate** (percent)
1997	453,156	.....
1998	450,531	−0.6
1999	480,131	6.6
2000	526,997	9.8
2001	560,500	6.4
2002	485,276	−13.4
2003	473,719	−2.4
2004	478,219	0.9
2005	518,873	8.5
2006	591,050	13.9

* Does not include dependent visa holders, as they are not subject to payment of the I–901 SEVIS fee.

** Growth rate rounded to nearest tenth of a percent.

As indicated in Table 6, the level of visa issuances varied greatly over the past ten years. The impact of the terrorist attacks of 9/11 and the aftermath had a significant impact on the number of visas issued. Other factors that impact the number of visas issued include: strategies employed by other countries to retain/attract international students; economic growth rate changes in source countries; changing populations in source countries; new programs and schools; globalization; program marketing; and foreign currency exchange rates. This high degree of variation in the historical data, combined with the variables impacting demand for visas, called for a simplified forecasting methodology.

Consequently, SEVP selected a three-year moving average of prior year growth rates in visa issuance data as the method to forecast program demand. A moving average is the arithmetic average of a certain number (n) of the most recent observations. When a new observation is added, the oldest observation is dropped. Moving averages, in smoothing out short-term fluctuations, highlight longer-term trends or cycles. A three-year moving average is more representative of latest changes in demand than of the average of all years; moderates extremes, while still matching overall trends; is slow to react to sharp changes—trailing measure; and is based on historical data of visa issuances rather than econometric forecasts of prospective students and exchange visitors.

SEVP evaluated alternative forecasting methods, including average growth rate, linear regression, and second degree polynomial regression. SEVP rejected these methods due to inaccuracy, poor fit as measured by the r-squared statistic, and the projection of unsustainable, sub-exponential growth, respectively. SEVP selected a three-year moving average because it best exhibited the characteristics of a balanced method between accuracy and conservatism, considering the limitations of the underlying data. As a trailing measure, a moving average is a conservative method and is, therefore, especially suitable for use in fee setting because it mitigates risk to the cash flow and subsequent solvency of SEVP. A three-year moving average, reflected in Table 7, places a balanced mix of emphasis on recent and historical data and still contains enough data points to smooth out some variability in the underlying data. SEVP determined that this method was the best fit, based on the deficiencies of other statistical methods and a qualitative evaluation of how well this method achieved the objectives of accuracy and conservatism.

TABLE 7.—HISTORICAL THREE-YEAR MOVING AVERAGE

Fiscal year	Issued visas (primary)	3-Year moving average	Growth rate (percent)	3-Year moving average by rate (percent)
1997	453,156	.....	.....	.....
1998	450,531	.....	.....	.....
1999	480,131	.....	.....	.....
2000	526,997	485,886	9.8	5.3
2001	560,500	522,543	6.4	7.6
2002	485,276	524,258	−13.4	0.9
2003	473,719	506,498	−2.4	−3.1
2004	478,219	479,071	0.9	−5.0
2005	518,873	490,270	8.5	2.4
2006	591,050	529,381	13.9	7.8

Once the three-year moving average was used to forecast issued visas, SEVP converted these values to payment estimates by multiplying by the ratio of historical payments to issued visas, as reflected in Table 8. This rate was developed by comparing the historical payments in FY 2005–FY 2007 to the F–1, M–1, and J–1 visas issued during the same time period. In addition to the overall I–901 SEVIS fee payment rate, the study also determined the proportion of payments between $0, $35, $180, and $200 fee payments. This proportion was developed based on the profile of F and M students and J exchange visitors that currently have active records in SEVIS.

TABLE 8.—I–901 SEVIS FEE PAYMENT FORECAST FY 2009–2010

I–901 Payment sub-type	FY 2009
Full Payments ($200), F/M	395,915
Full Payment ($180), J	180,950
Subsidized ($35)	221,223
No Payment ($0)	34,384
Total	832,472

The ABC model calculated a total I–901 SEVIS fee cost (including the cost of recertification) of $117,907 for FY 2009. This is offset by subtracting the payment made to the Department of the Treasury for expedited delivery of receipts for payment of I–901 SEVIS fees. (SEVP already recovers this cost through a direct payment of $30 paid by individuals who choose expedited delivery. Thus, SEVP must subtract this cost from the full budget to avoid collecting twice for the same service, as reflected in Table 9.)

TABLE 9.—FY 2009 I–901 FEE RECOVERABLE BUDGET

	Total budget	Offsets	Fee-recoverable
FY 2009 Budget	$117,907,380	$1,828,464	$116,084,916

To arrive at the final proposed fees, rounding was applied to the result of the fee algorithm. 8 CFR 103.7(b). Rounding results in a fee of $200 for F and M students and $180 for those J exchange visitors subject to the full fee.

b. Certification Fee

The demand pattern for school certification is difficult to predict. The historical data include the mass enrollment of schools into SEVIS in 2002 and 2003. While there is some continued demand for SEVP-certification from new schools, the demand has slowed; most potential participants have either already become certified or decided not to enroll F or M students. A higher fee may deter some schools from applying for certification. Given the difficulties in making the projection, SEVP elected to use a moving three-year average with the historical data from FY 2004 to FY 2006, illustrated in Table 10.

TABLE 10.—THREE-YEAR MOVING AVERAGE OF THE NUMBER OF SCHOOL CERTIFICATION APPLICATIONS PROCESSED

Fiscal year	Approved	Denied	Total	3-Year moving average
2002	1,636	297	1,933	.....
2003	5,367	976	6,343	.....
2004	745	135	880	3,052
2005	491	89	580	2,601
2006	536	97	633	*698

*Rounded to 700.

The total fee category budget is taken directly from the FY 2009 SEVP ABC model, reflected in Table 11. The figures under the offsets heading are from site-visit contracts that are priced separately from the certification fee. The cost is treated as pass-through cost (i.e., paid by the petitioning school).

TABLE 11.—FY 2009 CERTIFICATION FEE RECOVERABLE BUDGET

Fee category	Units	Total budget	Offsets	Fee-recoverable
Certification	700	$1,672,630	$543,000	$1,129,630

School certification fees are calculated by dividing the fee-recoverable budget by the anticipated number of payments. This results in a fee-recoverable amount from schools of $1,613 each. To arrive at the final proposed fee, rounding was applied to the result of the fee algorithm. This results in a Certification Fee of $1,700 per school.

c. Recertification Cost

As with the other fees, determining the fee amount to be incorporated in the I–901 SEVIS fee associated with recertification requires determining the full cost of recertification and the number of schools that would choose to recertify.

Number of Schools Expected to Recertify. As a new requirement, there is no program history to provide any insight into the level of participation in the school recertification program. In addition, due to the mass-enrollment of schools in 2002 and 2003 during the initial rollout of SEVIS and the biennial review requirement, as established in EBSVERA, most certified schools would be required to petition at the onset of recertification. As such, SEVP intends to schedule the recertification workload over a two-year period in order to smooth program demand and avoid the associated cyclical variation in workload and resource requirements.

As part of the procedure to establish the recertification workflow, SEVP conducted business process analysis to document the recertification business process, developed standard operating procedures for recertification, developed cycle-time measurements of the proposed processes, and estimated the level of effort required to conduct compliance reviews of certified schools. To accomplish this, SEVP collected cycle-time samples or cycle-time estimates from activity subject matter experts and validated these estimates through SEVP management.

Given the nature of initiating a new program, SEVP management developed notional estimates to forecast program demand. SEVP management made several assumptions as the basis of their estimates. First, SEVP assumed that not all schools would elect to recertify and that schools with extremely low student participation rates were more likely to elect to withdraw from the program, rather than assume the administrative burden of recertification. SEVP analyzed the number of schools in the SEVIS database that had F and/or M students attending their school. Of all the schools in SEVIS, 33% had no F and/or M students enrolled and 55% had less than five F and/or M students enrolled.

Based on this information, combined with knowledge and experience about currently certified schools, SEVP developed a notional estimate that 73% of certified schools would elect to recertify. This estimate was validated and accepted by SEVP management as part of the business process analysis and served as an assumption in the formulation of the FY 2009 proposed budget for recertification, as captured in the SEVP ABC model. SEVP used the same notional 73% estimate that was used to formulate the budget request as an input to the methodology used to develop the forecast for program demand for recertification:

SEVP determined the total number of participating schools in the program. This number reflects a snapshot in time, as the total number of program participants fluctuates with new schools being certified and other schools withdrawing from certification. At the time of this analysis, SEVIS contained 8,967 certified schools.

SEVP divided the total number of schools in half because, while schools are required to be recertified every two years, the recertification workload will be spread over two years during the first cycle of recertification to better distribute the labor and program resource demand.

SEVP multiplied the number of eligible schools (from Step 2) by the anticipated recertification participation rate of 73%. This step reduced the recertification-eligible schools to the subset of schools that SEVP believes would actually elect to undergo the recertification process and represents the total number of expected recertification petitions in FY 2009. This reduction reflects the elimination of most schools that do not enroll F and/or M students at present, but have enrolled small numbers of F and/or M students in the past. SEVP expects that such schools would not elect to continue SEVP certification.

Based on this calculation, SEVP forecasts that 3,250 schools would elect to recertify in FY 2009. A similar number of schools are expected to petition for recertification in FY 2010, the second year of the fee adjustment cycle.

I–17 Recertification Forecast Validation Analysis. Given the notional estimates used in the formulation of the recertification budget and subsequent recertification petition forecast, SEVP conducted a separate analysis to create a demand model for determining the probability that a school would recertify. The number of schools recertifying is derived by determining the probability of recertification for each currently certified school in SEVIS as of May 2007.[1] The most important criterion used in determining whether a school would petition to recertify is whether or not it currently enrolls F and/or M students. The schools are divided into two groups. The first is schools that have never enrolled an F or M student (1,386 schools) and the second group is those that have had a least one F or M student or that created initial records for future enrollments (7,576).

The demand for each year was determined by adding the probability of recertification for all schools. For example, one school with a 90% probability of recertifying and another school with a 10% probability of recertifying count as one probable certification. All schools had a probability factor between zero and one.

Demand Calculation for Zero-Student Schools. In determining the probability that a school that has never enrolled an F or M student would recertify, SEVP assumes that the more years a school has been certified, but does not enroll F and/or M students, the less likely it is that the school would recertify.

Demand Calculation for Schools with F and/or M Students. In determining the demand for recertification for a school with an enrolled F/M student population, three student population factors were considered. The student population factors considered: F/M student population for 2006 (or 2007 if the number was larger); F/M student population as a percentage of the total

[1] The number of schools in SEVIS varies as schools are added and withdrawn. The total number of schools for a specific analysis will differ from that of another analysis where data was extracted at a different time.

student population; and growth of F/M student population over the last two years. SEVP elected to use the notional estimate of a 73% recertification rate as the recertification petition forecast for the FY 2009 fee analysis.

Once the number of schools expected to recertify was established, the next step was to determine the appropriate recertification fee-recoverable budget for FY 2009, based on the capacity needed to certify this number of schools. Because there are no offsets, the recertification fee-recoverable budget is $5,332,690. To arrive at the final proposed fee, rounding was applied to the result of the fee algorithm. This resulted in a fee-recoverable recertification fee amount of $20 per F and M student, which is charged within the I–901 SEVIS fee.

4. Calculation of Site-Visit Cost

The cost of site visits for SEVP certification is a function of the number of locations listed on the school's Form I–17 petition, each of which must be visited. The current basic cost per site visit location for initial certification is $350. The proposed fee amount is $655 per location. The site visit fee is based on existing contracts that run from FY 2009 through FY 2011. Schools must pay the amount they calculate on the payment Web site, *https://www.pay.gov/paygov/* at the time they submit their petition.

5. Proposed Fee Levels

The full I–901 SEVIS fee for F and M students is increased from $100 to $200. The full I–901 SEVIS fee for most J exchange visitors is increased from $100 to $180. SEVP has not adjusted these fees since its inception in 2004. The I–901 SEVIS fee for special J-visa categories (au pair, camp counselor and summer work travel) remains at the previous $35 level, set in IIRIRA. IIRIRA also exempts government-sponsored exchange visitors in the G–1 programs.

The Certification Fee is increased from $230 to $1,700. This fee was set in 2002, prior to the reorganization of the Immigration and Naturalization Service (INS) into DHS. This is the base fee for certification and does not include the site visit fee.

The site visit cost for SEVP certification is priced separately as a pass-through charge to recover the associated contract cost. While this contract cost is in the cost model, it was subtracted from the Certification Fee calculations. All schools applying for SEVP certification would pay the site visit fee.

The proposed program fee schedule for SEVP in FY 2009 is shown in Table 12:

TABLE 12.—FY 2009 SEVP PROGRAM FEES

Category	Amount
I–901 SEVIS Fees:	
• I–901 Primary F/M visa holders (Full payment)	$200
• I–901 Primary J visa holders (Full payment)	190
• I–901 Special J-visa Categories (Subsidized payment)	35
• I–901 Government Visitor (G–1) (No payment)	0
I–17 School Fee:	
• Certification Fee	1,700
• Site visit fee for initial certification (base fee to be multiplied by number of locations cited on the Form I–17)	655

Table 13 reflects the break even analysis based on the proposed fee schedule and the proportional fee volumes (rounded) required to generate sufficient revenue to offset proposed program costs.

TABLE 13.—PROJECTED REVENUE

Fee	Amount	Forecasted volume	Revenue
I–901 F/M full	$200	392,284	$78,456,822
I–901 J full	180	179,291	32,272,295
I–901 partial	35	219,194	7,671,797
I–901 Subtotal		790,769	118,400,914
Certification Fee	1,700	694	1,179,087
Grand Total		791,463	119,580,001

F. Impact on Applicants

ICE recognizes that this proposed rule may have an impact on F, M, and J nonimmigrants, as well as the programs and schools seeking to become either SEVP-certified or recertified. The current school certification fee is based on the historical INS cost, determined prior to the inception of SEVIS. It reflects circumstances and work processes that were entirely different from those used today.

The current student fees are based on a fee analysis performed when SEVP was first established. The cost calculations were established on the basis of projected workload volumes and processes. In addition, Congress appropriated SEVP $30 million to develop SEVIS. Consequently, neither the cost for system development nor the cost of recertification was reflected in the earlier I–901 SEVIS fee.

The new fee analysis proposes fees that would: Recover the full cost of SEVP operations with fee-generated revenue; align the fees with currently planned costs and processes that have been redesigned and refined as the program has gained experience and maturity; and take advantage of more detailed and accurate data sources and improved management tools to align resources and workload. In addition, the

new fees reflect the development of a newly engineered database.

SEVP is mandated to review its fee structure at least every two years. *See* 31 U.S.C. 902(a)(8); OMB Circular A–25. Future fee rules would combine historic data with more recent experience, which would generate cost adjustments that would reflect new efficiencies, activity changes, amended security measures, or legislation developed in response to global developments. Although prediction of future fee adjustments is speculative, the historically long development of an intervening fee schedule, as well as the development costs that are necessarily included in this fee adjustment, suggests that future biennial fee adjustments would not be as substantial as the adjustments proposed in this rule.

IV. Procedures for Certification, Out-of-Cycle Review and Recertification of Schools

DHS is proposing to recertify all schools approved for attendance by F and M students every two years, pursuant to Title V, section 502 of EBSVERA and HSPD–2. DHS would establish procedures for review of each SEVP-certified school every two years. In addition, SEVP would conduct ''out-of-cycle'' reviews whenever it determines that clarification or investigation of school performance or eligibility is necessary. Certification, under this proposed rule, is a continuous, on-going process. From initial certification, SEVP continually oversees school compliance with recordkeeping, retention and reporting requirements. SEVP can identify deviations from reporting requirements by schools and take appropriate action through SEVIS and other resources.

Recertification is, in effect, a ''report card'' given to a school every two years to verify achievement of required standards in the period since the previous certification. The focus of oversight and recertification is past performance, coupled with a review to ensure that the educational institution maintains the basic eligibility required for certification.

Performance is monitored through SEVIS, DHS records, submissions from the school, and on-site reviews, when warranted. SEVP would require schools, as appropriate, to make corrections immediately, rather than wait for formal recertification. SEVP would review the school's compliance with Federal regulations and SEVP guidance.

A summary of proposed rule changes and explanation for the changes follows.

A. Filing a Petition for SEVP Certification, Out-of-Cycle Review or Recertification

1. General Requirements

Petition filings related to school adjudications are now submitted to SEVP through SEVIS, rather than the USCIS district director. This change was a result of the transfer of school adjudications from USCIS to ICE. The requirement for a separate petition to be filed by school systems or schools with campuses overlapping USCIS district boundaries has been deleted.

2. School Systems

The term ''school system'' is clarified to refer to groups of inter-related schools providing instruction to public school grade levels 9–12 and private school levels kindergarten through 12.

3. Petition Submission Requirements

Document submission requirements for petitions are clarified with respect to the need for providing paper copies of the Form I–17 with original signatures of all school officials entered on the form. More importantly, the scope of responsibility that a school official assumes in signing the Form I–17 is more clearly stated and the consequences of willful misstatement are established.

4. Eligibility

School eligibility criteria for SEVP certification are transferred from their present location in 8 CFR 214.3 to a position directly following the listing of types of schools that may be approved for SEVP certification. This repositioning is intended to provide a concise statement for prospective petitioners in their suitability assessment for becoming certified.

B. Interview of Petitioner

SEVP may conduct ''in-person'' interviews with the petitioner or the petitioner's representative as part of adjudication. SEVP proposes to expand this option to include telephone interviews, recognizing a telephone interview as having the same legal impact as testimony given in physical presence.

C. Notices and Communications

SEVP relies on procedures in 8 CFR 103.2 to give notices to schools to support the administration of the petition adjudication process. This is a USCIS-specific regulation; some terms and officials identified in the regulation do not pertain to ICE. This proposed rule identifies respective ICE counterparts that must be substituted for the SEVP application. SEVP has also expanded the use of these notices to include the compliance considerations of oversight, out-of-cycle review and recertification.

All notices from SEVP to schools related to certification, oversight, recertification, denial, appeals and withdrawal, as well as requests for evidence (RFEs) are generated and transmitted through SEVIS by e-mail. The date of service is reduced to the date of notice transmission by eliminating the delay of traditional mailing. All SEVP-certified schools are responsible for maintaining the accuracy of designated school official (DSO) information in SEVIS. Since notices are sent to all DSOs, SEVP would not recognize non-receipt of notification as grounds for appeal of a denial or withdrawal of a school. Schools are required to ensure that their spam filters do not block reception of SEVP notices. The term, ''in writing'' is expanded to include the option for electronic signatures to support movement toward a paperless environment.

The proposed rule would require that any change in school information in SEVIS must be updated and identifies the circumstances when changes that must be reported might occur.

A Notice of Intent to Withdraw (NOIW) is sent to a school 30 days prior to the school's certification expiration date as notification that a complete petition for recertification has not been received and advising the school that it would be automatically withdrawn on the certification expiration date if a completed petition has not been received. This notice ensures adequate due process before the benefit to enroll F and M students is removed. During an out-of-cycle review, an NOIW advises a school that SEVP has identified a compliance issue and is allowing the school an opportunity to correct any misperception by SEVP.

Notices of Denial, Automatic Withdrawal and Withdrawal are sent to advise schools of the date of the decision, appeal rights (if any), and the responsibilities for school operations until the SEVIS access termination date.

A Notice of SEVIS Access Termination Date informs a school of the date when all F and/or M students at a school which has been withdrawn from SEVP certification or denied recertification must complete transfer to another SEVP-certified school or depart the United States to remain in compliance with their status obligations. By the SEVIS access termination date, the denied or withdrawn school must have either

released the SEVP records of their F and M students or completed them. On this date, the school can no longer gain access to SEVIS for any updates, and all student records of the school's remaining in Active status are terminated. In most instances, this date would not be sent until appeals options have been exhausted and the decision to withdraw or deny has been upheld.

D. Recordkeeping, Retention and Reporting Requirements

Student records. The record retention period for student records is extended from one to three years beyond a student's program completion, including denial of reinstatement. This is to support review of recordkeeping compliance during the school's recertification. The proposed rule is clarified to ensure that the school continues to maintain the same recordkeeping and reporting obligations during a pending reinstatement as when the student is in status. School recordkeeping for F or M students, beyond information entered into SEVIS, is clarified to include that information generally recognized as contained in a school transcript. Schools must be able to provide transcripts or access to an equivalent tracking system. Information on coursework must be compiled and recorded within the term the courses are taken and graded. These clarifications articulate the intent of existing regulation and enable SEVP to better monitor student progress in his or her program, as well as participation.

Reporting Changes in Student and School Information. The proposed rule would clarify that, other than immediate updates of changes in school information following approval of a petition for SEVP certification or recertification, changes in any other information must be entered in SEVIS within 21 days of their occurrence. The standard had not been previously identified.

The proposed rule further clarifies that the terms ''program start date'' (used in SEVIS) and ''report date'' (used on Forms I–20) for initial students are interchangeable. It then goes to identify accepted considerations that can be taken by a DSO in determining the actual date. This clarification is necessary to ensure that nonimmigrants do not have excessive time in the United States before being required to report to their programs.

A requirement is established to update the program completion date in SEVIS when student performance indicates that the date already in SEVIS is no longer accurate. This is necessary to reduce the opportunity for inappropriate student overstays beyond actual program completion and is consistent with the requirement for timely recording of student information related to course enrollment and completion.

E. SEVP Certification, Recertification, Out-of-Cycle Review and Oversight

1. Certification

The proposed rule would establish a requirement that an on-line fee to petition must be filed before the petition would be adjudicated. The proposed rule updates fees for the certification petition and for site visits, as discussed above.

The proposed rule would set time requirements for conduct of the site visit following the date SEVP contacts the school for that purpose. The proposed rule would establish that failure by the school to comply with this requirement would result in the petition being denied for abandonment. The proposed rule would require knowledge proficiency standards for those persons identified as DSOs. The inability of personnel to demonstrate reasonable knowledge and competence of DSO requirements and responsibilities could be cause for petition denial.

2. Recertification

The proposed rule would specify the sections of 8 CFR 214.3 related to eligibility and compliance that would be examined during recertification. Following a distribution of certification expiration dates by SEVP in the first cycle of recertification to enable leveling of the workload, all subsequent petitions for recertification would be tied to exactly two years from the certification expiration date in the first recertification cycle. Delays in petition filing, adjudication and appeals (if any) would not impact a school's next certification expiration date. Schools should file as early as possible in the recertification eligibility period to preclude unnecessary processing delays in adjudication.

The timeline for filing is established. A school must submit a complete package before adjudication would begin, and SEVP would confirm with the school when a complete petition has been received. SEVP urges schools to submit their complete petition packages at least 12 weeks before their certification expiration date to allow SEVP adequate time to verify and confirm with the school that they filed their recertification petition package properly. Complete and timely filing is viewed by SEVP as a reflection on the DSOs' qualification for continued certification.

A school that has not filed a complete petition for SEVP recertification by its certification expiration date would be given immediate automatic withdrawal from certification.

3. School Recertification Process

SEVP would consider a range of factors in conducting recertification analyses. Indications of substandard performance and/or anomalies in SEVIS or from other sources since the previous certification may cause increased scrutiny. Analysis of a school may be modified if the school falls into special interest categories for enforcement.

The proposed rule establishes a school's responsibility for the actions of its employees (e.g., DSOs), whether or not they are currently employed at the time of recertification. The principal designated school official (PDSO) at a school is presumed to exercise oversight of all DSOs.

Few schools would receive an on-site review during SEVP recertification. On-site review in recertification is distinguished from an on-site visit given during initial certification. The purposes of an on-site visit include confirmation of a school's eligibility for SEVP certification, promoting basic competencies for DSOs, and providing outreach to better familiarize the school with the roles and responsibilities that come with the benefit of SEVP certification.

The purpose of an on-site review is, generally, to address compliance. While a few random on-site reviews may be conducted to maintain a performance baseline for all schools or to explore potential performance benchmarks, the primary reason an on-site review is conducted is to resolve questions or concerns about school performance.

4. Out-of-Cycle Review

The term ''out-of-cycle'' review is introduced in the proposed rule to replace the term ''periodic'' review, which implied a review at regular intervals. Out-of-cycle review can be conducted at any time and would be conducted when the level of concern warrants.

The proposed rule now specifies some types of changes to school information in SEVIS that would warrant an out-of-cycle review. In most instances, these reviews are limited to phone e-mail contact to gather details and confirm school eligibility for continued SEVP certification. Incomplete or ambiguous responses, coupled with other performance indicators, might lead to further investigation.

A school may be requested to electronically update all school information in SEVIS and/or provide SEVP with supporting documentation for the update at any time. The filing must be within 10 business days of the request.

On-site review in out-of-cycle review may be conducted for the same reasons as during recertification. A school undergoing out-of-cycle review that does not support an on-site review within 30 days of being contacted by SEVP would have its SEVP certification withdrawn.

The Notice of Continued Approval, advising of a positive determination to an out-of-cycle review, would have no impact on a school's established certification expiration date for recertification. An out-of-cycle review, generally, would be issue-oriented, while recertification entails an overall, more comprehensive review of school performance.

5. Voluntary Withdrawal of Certification

The proposed rule establishes procedures for a school to withdraw from its SEVP certification, addressing options for future petitioning to certify and the impact of previous performance on adjudication of future petitions. SEVP seeks to facilitate withdrawal of schools that it determines are not suitable for the continued enrollment of F and/or M students. If it subsequently elects to petition for SEVP certification, a school's past performance would be considered in the adjudication.

F. Designated School Officials

Only the PDSO of the main campus is authorized to submit a Form I–17 for recertification. SEVP may also designate certain functions in SEVIS for use by the PDSO only.

G. Denial or Withdrawal of SEVP Certification or Recertification Procedures

The proposed rule is updated, in accordance with EBSVERA, to recognize that future petitions for SEVP certification by schools that have been withdrawn on notice would be accepted at the discretion of the Director of SEVP. Reasons that a school might be no longer entitled to SEVP certification are clarified and expanded.

1. Automatic Withdrawal

The proposed rule establishes re-petitioning criteria for schools that have been automatically withdrawn. Automatic withdrawal is viewed by SEVP as essentially an administrative action. New petitions for SEVP certification are, consequently, accepted from schools that have been automatically withdrawn without restriction. However, schools that have been previously SEVP-certified would be subject to consideration of past performance in the adjudication of any new petition. The proposed rule identifies circumstances when automatic withdrawal would be implemented.

2. Withdrawal on Notice

The proposed rule clarifies existing text and gives a school that files an appeal of a withdrawal on notice the choice to request a telephone interview in support of its response to an NOIW.

3. Operations at a School When SEVP Certification Is Withdrawn or Recertification Denied

The proposed rule establishes the legal requirements and necessary procedures for such schools in the interim between receipt of a Notice of Denial or Withdrawal of SEVP Certification through the SEVIS access termination date. It prescribes actions that DSOs must take on behalf of their F or M students to protect and avoid wrongful termination of their visa status. The proposed rule describes the SEVIS access termination date and the parameters by which it is determined. The proposed rule recognizes the responsibility and liability that SEVP-certified schools have for their F and M students, and identifies the SEVIS access termination date as the date when school responsibility is relinquished and liability for these students is removed.

V. Statutory and Regulatory Requirements

A. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (RFA; 5 U.S.C. 601(6)), ICE examined the impact of this proposed rule on small entities. The ''Regulatory Flexibility Act Analysis: Impact on Small Schools of the Change in Fees for Certification and Institution of Recertification by the Student and Exchange Visitor Program,'' located in the docket, provides details of how the analysis was conducted and detailed information on the results.

As described above, under INA section 186(m)–(n), 8 U.S.C. 1356(m)–(n), SEVP is authorized to collect fees to support the costs of certification and recertification from those entities that benefit from the certification/recertification process. Initial certification is viewed as a benefit to the school. Recertification is viewed as a benefit to F and M students. Recovery of the full cost of all operations is essential because SEVP receives no appropriated funds and is fully dependent on fees to meet operating expenses and newly identified requirements.

A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business, per the Small Business Act (15 U.S.C. 632)); a small, not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people). This analysis focuses on small schools. SEVP used the North American Industry Classification System (NAICS) for the Educational Sector [2] combined with the Small Business Administration (SBA) definition of small entities for all schools except public high schools.

The RFA and SBA guidance requires each agency to make its own determination of significant impact, given the characteristics of the regulated population and the given rule. Among the things the agency considers when determining the impact of a rule are: the possibilities of long-term insolvency; short-term insolvency; disproportional burden, based on whether or not the regulations place the small entities at a significant competitive disadvantage; and inefficiency, based on whether the social cost imposed on small entities outweighs the social benefit of regulating them.

Establishing a cut-off level for significant impact on this population is difficult. Many schools are non-profit or public. Privately owned schools often operate with modest profit margins. Profits go back into the school for expansion of the school or the facilities in most cases.

Certification and recertification are voluntary. In addition, schools with no F and/or M students and no concrete plans to enroll any, in particular, have little motive to recertify.

Another factor is that SEVP cannot certify or recertify schools that are under-funded or financially unstable. The certification regulations require that a school ''possesses the necessary facilities, personnel, and finances to conduct instruction in recognized courses.'' Regulations require that schools be established and recognized

[2] The Educational Services sector comprises establishments that provide instruction and training in a wide variety of subjects. This instruction and training is provided by specialized establishments, such as schools, colleges, universities, and training centers. These establishments may be privately owned and operated for profit or not for profit, or they may be publicly owned and operated. They may also offer food and accommodation services to their students.

institutions of learning prior to becoming SEVP-certified. This eliminates marginal and start-up schools from the population of schools that can seek certification.

SEVP examined the entire range of potential impacts on schools and did an in-depth analysis of the smalls schools at two levels—''3% and over'' and ''5% and over,'' meaning that the certification fee is ''3% and over'' or ''5% and over'' of the total earnings of the school in tuition collected from their F and/or M students. Detailed results of this examination are in the ''Regulatory Flexibility Act Analysis: Impact on Small Schools of the Change in Fee for Certification and Institution of Recertification by the Student and Exchange Visitor Program,'' located in the docket.

SEVP conducted the analysis of the potential impact of the proposed Certification Fee in accordance with the RFA using data drawn from SEVIS in May 2007. At that time, there were 8,961 SEVP-certified schools. This number may differ from other analyses as the number of certified schools fluctuates with SEVP continually adding newly certified schools and schools withdrawing from certification.

All SEVP-certified schools self-report average enrollment and average tuition cost for students. SEVP did not need to use publicly available information or use sampling, therefore, to gather data on the finances of the schools. The reported number of students and the tuition cost per student were used to estimate annual total tuition income. The tuition cost per student was determined by the data in the school's Form I–17, available in SEVIS, and the tuition cost reported for F and/or M students.

In some cases, the data supplied by a school for the average cost to students appeared erroneous. In these instances, the cost was updated using the school's published tuition rate from its Web site or the amount of tuition shown in the records of individual F and/or M students at that school.

SEVP found that 46% of schools in SEVIS meet the SBA definition of a small entity. Table 14 provides a list of schools by type and SBA NAICS code as well as the percent of large and small schools in that category.

TABLE 14.—PERCENT OF SEVP-CERTIFIED SCHOOLS BY TYPE AND SBA NAICS CODES

Type of school	Description	NAICS codes	Percent of large schools	Percent of small schools
Arts	Schools clearly identifiable as giving instruction in the fine arts; a mix of F and M schools.	611610	1.1	0.8
Flight	Schools that offer only flight training and other related technical training	611512	0.4	3.5
English Language	Schools that offer English language instruction only	611630	4.4	3.1
English Language and Other	Schools that offer English language instruction and other courses, such as test preparation.	611630 611691 611430	1.3	0.5
Seminary	Schools with seminary or theology in the name. Most issue a degree	.....	1.5	3.8
Other Private Academic	F schools that do not fall into another category. Includes Bible schools, nursing schools, etc. that do not issue a degree.	611410 611420 611430	1.0	3.0
Private K–12	Private elementary, middle and secondary schools	611110	20.1	44.4
Public HS	Public high schools	611110	5.0	14.4
Technical Vocational	M schools that do not fall into another category (diverse group that includes schools of horseshoeing, beauty schools, culinary arts schools, non-degree medical instruction, and computer technical training).	611210 611410 611420 611430 611511 611519	5.1	13.5
University or College	Schools that issue one of the following degrees: associates, bachelors, masters, and Ph.D. These schools may also offer programs of study in the other areas listed.	611310 611210	60.1	12.9

Twenty-nine SEVP-certified schools have not registered any F or M students. Nearly 25 percent of SEVP-certified schools have five or fewer F and or M students enrolled. Most have not had more than five since the inception of SEVP. SEVP does not expect these schools to recertify.

The resulting profile was used to project the expected characteristics for the 700 new schools expected to certify annually. This analysis indicated that approximately 82% of the schools seeking certification in the future would be small schools. Table 16 provides the projected number of schools at each level of impact.

TABLE 16.—PROJECTED NUMBER OF SMALL SCHOOLS EXPECTED TO CERTIFY BY LEVEL OF IMPACT

Level of impact	Projected number of small schools
Under 0.5%	469
0.5% to under 1%	59
1% to under 2%	29
2% to under 3%	7
3% to under 4%	1
4% to under 5%	5
5% to under 6%	1
6% to under 7%	2
7% to under 8%	0
10% to under 11%	0
12% to under 13%	1
23% to under 24%	1

Of the 574 small schools expected to apply for certification, SEVP projects that about 10 schools may be impacted by 3% or more. That is, the certification fee is 3% or more of the total earnings of the school in tuition collected by their F and/or M students. That represents about 1.7% of the small school certification applicants. SEVP expects that four small schools (0.7%) would be impacted by 5% or more.

The category most impacted would be ''Other Private Academic'' schools. Of the 16 schools of this type, SEVP projects, as illustrated in Table 17, two would be impacted by 3% and over and none would be impacted by 5% and over.

TABLE 17.—SUMMARY OF THE IMPACT OF THE CERTIFICATION FEE ON SMALL SCHOOLS

	Percent of small schools impacted 3% and over	Percent of small schools impacted 5% and over
Certification Fee	1.7	0.7

SEVP did not make a determination of substantial numbers, as the percentage of schools impacted by the fees is so low that it does not appear substantial.

SEVP considered four alternatives to the proposed Certification Fee in this proposed rule. The need for fees to recover the operating costs of SEVP was inherent in all of the alternatives. Three were rejected for the reasons given. Option 2 was chosen. SEVP seeks comments on the alternatives considered and any significant alternatives not considered.

Option 1: Do not charge a fee to cover the costs of certification and recertification. SEVP does not consider a ''no charge'' option to be viable. There are only two sources of income available to SEVP: fee income or appropriated funds. Congress mandated that ICE/SEVP certify schools that wish to enroll F or M students and recertify those schools every two years. It is unlikely that Congress would appropriate operating funds for a program that has the authority to collect fees from the entities that derive direct benefits from it.

Option 2: Allocate some or all costs to the I–901 SEVIS fee. One alternative was to assign all costs to the fee charged to F, M and J nonimmigrants. This would spread the fee-recoverable cost of the program against a larger population. The I–901 SEVIS fee is authorized by the Illegal Immigration Reform and Responsibility Act of 2002 (IIRIRA, 8 U.S.C. 1372). SEVP considers availability of certified schools that F and M students can attend as a benefit to students. Initial certification constitutes a potential benefit to the petitioning schools, however, under INA section 286(m), 8 U.S.C. 1356(m), SEVP opted to collect a fee from schools filing a certification petition, but to pass the cost of recertification to the nonimmigrants being benefited for these reasons.

Option 3: Apportion recertification fees by number of F and/or M students enrolled. SEVP would assess a Recertification Fee based on the number of F and/or M students enrolled at a school during the previous two years in this scenario. The advantages of this load-based scenario include: lower fees for schools with fewer F and/or M students and the scenario may deter schools from issuing Forms I–20 to marginally qualified students. The disadvantages of this scenario include: the schools with large enrollments would pay a disproportionate part of the cost of recertification because the cost for oversight and recertification does not vary directly with the number of students; the number of students would have to be calculated; a school would not be able to predict its fee from year to year; a process for resolving billing disputes would be needed; and SEVP would need to create a fee collection system that creates an invoice to the school.

SEVP rejected this option because assessing and collecting the fee would require building a payment process that captured the needed data, generated invoices, and tracked invoice payment. The cost to build and operate a fee payment system of this complexity could increase the overall program costs. It would also make it more difficult for SEVP-certified schools to budget for the recertification.

Option 4: Charge a variable recertification fee based on the risk profile for the school. Schools would be put into a risk category based on the student profile. SEVP would need to develop a methodology to assign a risk factor for each type of school. For example, schools that enroll grades K–12 deal with a lower risk population, so their risk is reduced. For these K–12 schools the risk factor might be 75%, whereas a high-risk group might have a factor of 125%. The fees would be adjusted so that schools in a higher risk category would pay higher fees.

The advantages would be: schools with classes of students that pose a lower risk would pay a smaller fee; types of schools with past performance indicating a higher risk would pay a higher fee; and the fee would be predictable.

The disadvantages would be: the rationale for the fee structure is complex and would need to be supported by a full analysis; any rationale for assessing risk would be controversial; the fee would be higher than that in the current version of the rule for many small schools; and some schools highly in compliance with SEVP requirements would be penalized for the poor performance of other schools in that group, as schools would be grouped by type.

SEVP rejected this alternative due to the inherent complexity and difficulty in making fair risk assessments for entire groups of schools.

SEVP believes that, based on this analysis, the option it chose for this proposed rule is the most appropriate option and that this proposed rule, once final, would not have a significant economic impact on a substantial number of small entities. SEVP welcomes comments on that conclusion. Members of the public should please submit a comment, as described in this proposed rule under ''Public Participation,'' if they think that their business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it. It would be helpful if commenters provide SEVP with as much of the following information as possible. Is the commenter's school currently SEVP-certified? If not, does the school plan to seek certification? Does it meet the SBA criteria for a small entity? If not, what criteria should SEVP use to properly identify small schools? Indicate the type of school, using one of those listed in this analysis or a more complete description. Please describe the type and extent of the impact on the commenter's school. Please describe any recommended alternative method of assessing the Certification Fee or the institution of recertification that would mitigate the impact on a small school or comment upon the alternatives presented in the ''Regulatory Flexibility Act Analysis,'' located in the docket.

SEVP may certify in the final rule that this action does not have a significant economic impact on a substantial number of small entities if comments received do not demonstrate that the rule would cause a substantial number of small entities to incur significant direct costs.

B. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (UMRA) requires certain actions to be taken by an agency before ''promulgation of any rule that includes any Federal mandate that may result in the expenditure by State, Local and Tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year.'' 2 U.S.C. 1532(a). This rulemaking is not a ''Federal mandate,'' as defined for UMRA purposes, 2 U.S.C. 658(6), as the payment of an SEVP certification fee by individuals, Local governments or other private sector entities is (to the extent it could be termed an enforceable duty) one that arises from participation in a voluntary Federal program (i.e., applying for status as F–1, F–3, M–1, or M–3 students or as J–1 exchange visitor in the United States or seeking approval from the United

States for attendance by certain aliens seeking status as F–1, F–3, M–1 students). 2 U.S.C. 658(7)(A)(ii). Therefore, no actions were deemed necessary under the provisions of the UMRA.

C. Small Business Regulatory Enforcement Fairness Act of 1996

This rulemaking is not a major rule, as defined by 5 U.S.C. 804, for purposes of Congressional review of agency rulemaking under the Small Business Regulatory Enforcement Act of 1996, Public Law 104–121. This rulemaking would not result in an annual effect on the economy of more than $100 million; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based companies to compete with foreign-based companies in domestic and export markets.

D. Executive Order 12866: Regulatory Review

This proposed rule is not considered by DHS to be an economically significant regulatory action under Executive Order 12866, section 3(f), Regulatory Planning and Review, since it would not have an annual effect on the United States' economy of $100 million. The implementation of this proposed rule would provide ICE SEVP with additional fee revenue of $58,538 million in FY 2009 and $62,581 million in FY 2010. It is however, a significant rulemaking and has been reviewed by OMB.

E. Executive Order 13132, Federalism

This rulemaking would not have substantial direct effects on the States, or on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of Government. Consequently, DHS has determined that this rulemaking does not have sufficient Federalism implications to warrant the preparation of a Federalism summary impact statement, in accordance with section 6 of Executive Order 13132.

F. Executive Order 12988 Civil Justice Reform

This proposed rule meets the applicable standards set forth in 3(a) and 3(b)(2) of Executive Order 12988.

G. Paperwork Reduction Act

All Departments are required to submit to OMB for review and approval, any reporting or recordkeeping requirements inherent in a rule under the Paperwork Reduction Act of 1995, Public Law 104–13, 109 Stat. 163 (1995), 44 U.S.C. 3501, *et seq.* Schools will be using SEVIS to petition for recertification. The recertification process requires schools to input data in SEVIS, print the Form I–17 and sign the form. The electronic data captured for the Form I–17 have been previously approved for use by the Office of Management and Budget (OMB) as one component of the data that are captured in SEVIS. The OMB Control Number for this collection is 1615–0066 (changed to 1653–0038). With the implementation of SEVIS under 67 FR 60107 (September 25, 2002), most schools enrolled in SEVIS were petitioning for DHS recertification, rather than initial certification (i.e., enrolling F or M nonimmigrant students for the first time). The workload for both certification and recertification was included under OMB 1615–0066.

The changes to the fees would require changes to SEVIS and the I–901 software to reflect the updated fee amounts, as these systems generate the pertinent petition and application forms. ICE SEVP would submit a revision to OMB with respect to any changes to existing information collection approvals.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of Information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 214

Administrative practice and procedure, Aliens, Employment, Foreign officials, Health professions, Reporting and recordkeeping requirements, Students.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 103—POWERS AND DUTIES; AVAILABILITY OF RECORDS

1. The authority citation for part 103 is revised to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1101, 1103, 1304, 1356, 1372; 31 U.S.C. 9701; Public Law 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*); E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

2. Section 103.7(b)(1) is amended by revising the entries for Forms I–17, I–290B, and I–901 in the listing of fees, to read as follows:

§ 103.7 Fees.

* * * * *

(b) * * *

(1) * * *

* * * * *

Form I–17. $1,700 plus $655 per location listed on the Form I–17B for filing a petition for school certification.

* * * * *

Form I–290B. $585 (the fee will be the same when an appeal is taken from the denial of a petition with one or more multiple beneficiaries, provided that they are all covered by the same petition, and therefore, the same decision), for filing an appeal from any decision under the immigration laws (except those related to either Form I–17 SEVP certification or recertification) in any type of proceeding over which the Board of Immigration Appeals does not have appellate jurisdiction.

* * * * *

Form I–901. $200 for remittance of the I–901 SEVIS fee levied on F and M students. $180 for remittance of the I–901 SEVIS fee levied on most J exchange visitors. $35 for remittance of the I–901 SEVIS fee levied for J–1 au pairs, camp counselors, and participants in a summer work/travel program. There is no I–901 SEVIS fee remittance obligation for J exchange visitors in government sponsored programs.

* * * * *

PART 214—NONIMMIGRANT CLASSES

3. The authority citation for part 214 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1185 (pursuant to E.O. 13323, 69 FR 241, 3 CFR, 2003 Comp., p. 278), 1186a, 1187, 1221, 1281, 1282, 1301–1305, 1356, 1372, 1379, 1731–32; section 643, Pub. L. 104–208, 110 Stat. 3009–708; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901 note, and 1931 note, respectively, 8 CFR part 2.

4. Section 214.3 is amended by:

a. Revising paragraph (a)(1);

b. Adding paragraph (a)(3);

c. Revising the first sentence in paragraph (b) introductory text;

d. Revising the first sentence in paragraph (c);

e. Revising paragraphs (d), (e), and (f);

f. Revising paragraph (g)(1);

g. Removing paragraph (g)(2);

h. Redesignating paragraphs (g)(3) and (g)(4) as paragraphs (g)(2) and (g)(3) respectively;

i. Revising newly designated paragraph (g)(2) heading, and by revising newly designated paragraphs (g)(2)(i), (g)(2)(ii) introductory text, (g)(2)(ii)(E), and (g)(2)(iii)(C);

j. Adding paragraph (g)(2)(iii)(D);

k. Revising paragraph (h);
l. Revising paragraph (i);
m. Revising the introductory text of paragraph (k);
n. Revising paragraph (l)(1)(ii); and by
o. Revising paragraph (l)(2).

The revisions and additions read as follows:

§ 214.3 Approval of schools for enrollment of F and M nonimmigrants.

(a) * * *

(1) *General.* A school or school system seeking initial or continued authorization for attendance by nonimmigrant students under sections 101(a)(15)(F)(i) or 101(a)(15)(M)(i) of the Act, or both, must file a petition for certification or recertification with the Student and Exchange Visitor Program (SEVP), using the Student and Exchange Visitor Information System (SEVIS), in accordance with the procedures at paragraph (h) of this section. The petition must state whether the school or school system is seeking certification for attendance of nonimmigrant students under section 101(a)(15)(F)(i) or 101(a)(15)(M)(i) of the Act or both. The petition must identify by name and address each location of the school that is included in the petition for certification or recertification, specifically including any physical location in which a nonimmigrant can attend classes through the school (i.e., campus, extension campuses, satellite campuses, etc.).

(i) *School systems.* A school system, as used in this section, means public school (grades 9–12) or private school (grades kindergarten–12). A petition by a school system must include a list of the names and addresses of those schools included in the petition with the supporting documents.

(ii) *Submission requirements.* Certification and recertification petitions require that a complete Form I–17, Petition for Approval of School for Attendance by Nonimmigrant Student, including supplements A and B and bearing original signatures, be included with the school's submission of supporting documentation. In submitting the Form I–17, a school certifies that the designated school officials (DSOs) signing the form have read and understand DHS regulations relating to: nonimmigrant students at 8 CFR 214.1, 214.2(f), and/or 214.2(m); change of nonimmigrant classification for students at 8 CFR 248; school certification and recertification under this section; withdrawal of school certification under this section and 8 CFR 214.4; that both the school and its DSOs intend to comply with these regulations at all times; and that, to the best of its knowledge, the school is eligible for SEVP certification. Willful misstatements constitute perjury (18 U.S.C. 1621).

* * * * *

(3) *Eligibility.* (i) The petitioner, to be eligible for certification, must establish at the time of filing that it:

(A) Is a bona fide school;

(B) Is an established institution of learning or other recognized place of study;

(C) Possesses the necessary facilities, personnel, and finances to conduct instruction in recognized courses; and

(D) Is, in fact, engaged in instruction in those courses.

(ii) The petitioner, to be eligible for recertification, must establish at the time of filing that it:

(A) Remains eligible for certification in accordance with paragraph (a)(3)(i) of this section;

(B) Has complied during its previous period of certification with recordkeeping, retention, and reporting requirements and all other requirements of paragraphs (g), (j), (k), and (l) of this section.

(b) * * * Institutions petitioning for certification or recertification must submit certain supporting documents as follows, pursuant to sections 101(a)(15)(F) and (M) of the Act. * * * * * * * * *

(c) * * * If the petitioner is a vocational, business, or language school, or American institution of research recognized as such by the Secretary of Homeland Security, it must submit evidence that its courses of study are accepted as fulfilling the requirements for the attainment of an educational, professional, or vocational objective, and are not avocational or recreational in character. * * *

(d) *Interview of petitioner.* The petitioner or an authorized representative of the petitioner may be required to appear in person before or be interviewed by telephone by a DHS representative prior to the adjudication of a petition for certification or recertification. The interview will be conducted under oath.

(e) *Notices to schools related to certification or recertification petitions or to out-of-cycle review*—(1) *General.* All notices from SEVP to schools or school systems related to school certification, recertification, or out-of-cycle review will be issued in accordance with the procedures at 8 CFR 103.2(b)(1), (4)–(16), (18) and (19), with the exception that all procedures will be conducted by SEVP, the SEVP Director, and the Assistant Secretary, ICE, as appropriate, and except as provided in this section. All notices related to the collection of evidence, testimony, and appearance pertaining to petitions for recertification encompass compliance with the recordkeeping, retention and reporting, and other requirements of paragraphs (f), (g), (j), (k), and (l) of this section, as well as to eligibility. Notices will be generated and transmitted through SEVIS and/or by e-mail. The date of service is the date of transmission of the e-mail notice. DSOs must maintain current contact information, including current e-mail addresses, at all times. Failure of a school to receive SEVP notices due to inaccurate DSO e-mail addresses in SEVIS or blockages of the school's e-mail system caused by spam filters is not grounds for appeal of a denial or withdrawal. The term ''in writing'' means either a paper copy bearing original signatures or an electronic copy bearing electronic signatures.

(2) *SEVP approval notification and SEVIS updating by certified schools.* SEVP will notify the petitioner by updating SEVIS to reflect approval of the petition and by e-mail upon approval of a certification or recertification petition. The certification or recertification is valid only for the type of program and nonimmigrant classification specified in the certification or recertification approval notice. The certification or recertification must be recertified every two years and may be subject to out-of-cycle review at any time. Approval may be withdrawn in accordance with 8 CFR 214.4.

(3) *Modifications to Form I–17 while a school is SEVP-certified.* Any modification made by an SEVP-certified school on the Form I–17 at any time after certification and for the duration of a school's authorization to enroll F and/or M students must be reported to SEVP and will be processed by SEVP in accordance with the provisions of paragraphs (f)(1), (g)(2) and (h)(3)(i) of this section.

(4) *Notice of Intent to Withdraw (NOIW) SEVP certification*—(i) *Automatic withdrawal.* SEVP will serve the school with an NOIW 30 days prior to a school's SEVP certification expiration date if the school has not submitted to SEVP a completed recertification petition, in accordance with paragraph (h)(2) of this section. The school will be automatically withdrawn immediately, in accordance with 8 CFR 214.4(a)(3), if it has not submitted a completed recertification petition by the school's certification expiration date.

(ii) *Withdrawal on notice.* SEVP will issue an NOIW, in accordance with 8

CFR 214.4(b), if SEVP determines that a school reviewed out-of-cycle has failed to sustain eligibility or has failed to comply with the recordkeeping, retention, reporting and other requirements of paragraphs (f), (g), (j), (k), and (l) of this section. When a school fails to file an answer to an NOIW within the 30-day period, SEVP will withdraw the school's certification and notify the DSOs of the decision, in accordance with 8 CFR 214.4(d). Such withdrawal of certification may not be appealed.

(5) *Notice of Denial.* A Notice of Denial will be sent to a school when SEVP denies a petition for initial certification or recertification. The notice will address appeals options. Schools denied recertification must comply with 8 CFR 214.4(i).

(6) *Notice of Automatic Withdrawal.* Schools that relinquish SEVP certification for any of the reasons cited in 8 CFR 214.4(a)(3) will be served a Notice of Automatic Withdrawal.

(7) *Notice of Withdrawal.* A school found to be ineligible for continued SEVP certification as a result of an out-of-cycle review will receive a Notice of Withdrawal. Schools withdrawn must comply with 8 CFR 214.4(i).

(8) *Notice of SEVIS Access Termination Date.* The Notice of SEVIS Access Termination Date gives the official date for the school's denial or withdrawal to be final and SEVIS access to be terminated. In most situations, SEVP will not determine a SEVIS access termination date for that school until the appeals process has concluded and the initial denial or withdrawal has been upheld, in accordance with 8 CFR 214.4(i)(3). The school will no longer be able to access SEVIS and SEVP will automatically terminate any remaining Active SEVIS records for that school on that date.

(f) *Adjudication of a petition for SEVP certification or recertification.* (1) Approval. The school is required to immediately report through SEVIS any change to its school information upon approval of a petition for SEVP certification or recertification. Modification to school information listed in paragraph (h)(3) of this section will require a determination of continued eligibility for certification. The certification is valid only for the type of program and student specified in the approval notice. The certification may be withdrawn in accordance with the provisions of 8 CFR 214.4, is subject to review at any time, and will be reviewed every 2 years.

(2) *Denial.* The petitioner will be notified of the reasons for the denial and appeal rights, in accordance with the provisions of 8 CFR part 103 and 8 CFR 214.4, if SEVP denies a petition for certification or recertification.

(g) * * *

(1) *Student records.* An SEVP-certified school must keep records containing certain specific information and documents relating to each F–1 or M–1 student to whom it has issued a Form I–20, while the student is attending the school and until the school notifies SEVP, in accordance with the requirements of paragraphs (g)(1) and (2) of this section, that the student is not pursuing a full course of study. The school must keep a record of having complied with the reporting requirements for at least three years after the student is no longer pursuing a full course of study. The school must maintain records on the student in accordance with paragraphs (g)(1) and (2) of this section if a school recommends reinstatement for a student who is out of status. The school must maintain records on the student for three years from the date of the denial if the reinstatement is denied. The DSO must make the information and documents required by this paragraph available, including academic transcripts, and must furnish them to DHS representatives upon request. Schools must maintain and be able to provide an academic transcript or other routinely maintained student records that reflect the total, unabridged academic history of the student at the institution, in accordance with paragraph (g)(1)(iv) of this section. All courses must be recorded in the academic period in which the course was taken and graded. The information and documents that the school must keep on each student are as follows:

(i) Identification of the school, to include name and full address.

(ii) Identification of the student, to include name while in attendance, date and place of birth, country of citizenship, school's student identification number.

(iii) Current address where the student and his or her dependents physically reside. In the event the student or his or her dependents cannot receive mail at such physical residence, the school must provide a mailing address in SEVIS. If the mailing address and the physical address are not the same, the school must maintain a record of both mailing and physical addresses and provide the physical location of residence of the student and his or her dependents to DHS upon request.

(iv) Record of coursework. Identify the student's degree program and field of study. For each course, give the periods of enrollment, course identification code and course title; the number of credits or contact hours, and the grade; the number of credits or clock hours, and for credit hour courses the credit unit; the term unit (semester hour, quarter hour, etc.). Include the date of withdrawal if the student withdrew from a course. Show the grade point average for each session or term. Show the cumulative credits or clock hours and cumulative grade point average. Narrative evaluation will be accepted in lieu of grades when the school uses no other type of grading.

(v) Record of transfer credit or clock hours accepted. Type of hours, course identification, grades.

(vi) Academic status. Include the effective date or period if suspended, dismissed, placed on probation, or withdrawn.

(vii) Whether the student has been certified for practical training, and the beginning and end dates of certification.

(viii) Statement of graduation (if applicable). Title of degree or credential received, date conferred, program of study or major.

(ix) Termination date and reason.

(x) The documents referred to in paragraph (k) of this section.

(xi) Date of last entry into the United States; most recent Form I–94 number and date of issue.

Note to paragraph (g)(1): A DHS officer may request any or all of the above data on any individual student or class of students upon notice. This notice will be in writing if requested by the school. The school will have three work days to respond to any request for information concerning an individual student, and ten work days to respond to any request for information concerning a class of students. The school will respond orally on the same day the request for information is made if DHS requests information on a student who is being held in custody, and DHS will provide a written notification that the request was made after the fact, if the school so desires. DHS will first attempt to gain information concerning a class of students from DHS record systems.

(2) *Reporting changes in student and school information.* (i) Schools must update SEVIS with the current information within 21 days of a change in any of the information contained in paragraphs (f)(1) and (h)(3) of this section.

(ii) Schools are also required to report within 21 days any change of the information contained in paragraph (g)(1) or the occurrence of the following events:

* * * * *

(E) Any other notification request not covered by paragraph (g)(1) of this section made by DHS with respect to the current status of the student.

(iii) * * *

(C) *The start date of the student's next session, term, semester, trimester, or quarter.* For initial students, the start date is the ''program start date'' or ''report date.'' (These terms are used interchangeably.) The DSO may choose a reasonable date to accommodate a student's need to be in attendance for required activities at the school prior to the actual start of classes when determining the report date on the Form I–20. Such required activities may include, but are not limited to, research projects and orientation sessions. The DSO may not, however, indicate a report date more than 30 days prior to the start of classes. The next session start date is the start of classes for continuing students.

(D) *Adjustment to the program completion date.* Any factors that influence the student's progress toward program completion must be reflected by making an adjustment updating the program completion date.

* * * * *

(h) *SEVP certification, recertification, out-of-cycle review, and oversight of schools*—(1) *Certification.* A school seeking SEVP certification for attendance by nonimmigrants under section 101(a)(15)(F)(i) or 101(a)(15)(m)(i) of the Act must use SEVIS to file an electronic petition (which compiles the data for the Form I–17) and must submit the nonrefundable certification petition fee on-line.

(i) *Filing a petition.* The school must access the SEVP Web site at *http://www.ice.gov/sevis* to file a certification petition in SEVIS. The school will be issued a temporary ID and password in order to access SEVIS to complete and submit an electronic Form I–17. The school must submit online the nonrefundable certification petition fee of $1,700, and the mandatory site visit fee of $655. The school must pay the $655 site visit cost for each additional school or campus listed on Form I–17B.

(ii) *Site visit, petition adjudication and school notification.* SEVP will conduct a site visit for each petitioning school and its additional schools or campuses. SEVP will contact the school to arrange the site visit. The school must comply with and complete the visit within 30 days after the date SEVP contacts the school to arrange the visit, or the petition for certification will be denied as abandoned. DSOs and school officials that have signed the school's Form I–17 petition must be able to demonstrate to DHS representatives how they obtain access to the regulations cited in the certification as part of the site visit. Paper or electronic access is acceptable. DSOs must be able to extract pertinent citations within the regulations related to their requirements and responsibilities. SEVP will issue a notice of approval and SEVIS will be updated to reflect the school's certification if SEVP approves the school's certification petition.

(iii) *Certification denial.* SEVP will issue a notice of denial in accordance with paragraph (f)(2) of this section if a school's petition for certification is denied.

(2) *Recertification.* Schools are required to file a completed petition for SEVP recertification before the school's certification expiration date, which is two years from the date of their previous SEVP certification or recertification expiration date, except for the first recertification cycle after publication of the recertification rule. SEVP will review a petitioning school's compliance with the recordkeeping, retention and reporting, and other requirements of paragraphs (f), (g), (j), (k), and (l) of this section, as well as continued eligibility for certification, pursuant to paragraph (a)(3) of this section.

(i) *Filing of petition for recertification.* Schools must submit a completed Form I–17 (including supplements A and B) using SEVIS, and submit a paper copy of the Form I–17 bearing original signatures of all officials. SEVP will notify all DSOs of a previously certified school 180 days prior to the school's certification expiration date that the school may submit a petition for recertification. A school may file its recertification petition at any time after receipt of this notification. A school must submit a complete recertification petition package, as outlined in the submission guidelines, by its certification expiration date. SEVP will send a notice of confirmation of complete filing or rejection to the school upon receipt of any filing of a petition for recertification.

(A) Notice of confirmation assures a school of uninterrupted access to SEVIS while SEVP adjudicates the school's petition for recertification. A school that has complied with the petition submission requirements will continue to have SEVIS access after its certification expiration date while the adjudication for recertification is pending. The school is required to comply with all regulatory, recordkeeping, retention and reporting, and other requirements of paragraphs (f), (g), (j), (k), and (l) of this section during the period the petition is pending.

(B) Notice of rejection informs a school that it must take prompt corrective action in regard to its recertification petition prior to its certification expiration date to ensure that its SEVIS access will not be terminated and its petition for recertification will be accepted for adjudication.

(ii) *Consequence of failure to petition.* SEVP will issue an NOIW to the school 30 days prior to a school's certification expiration date. SEVP will no longer accept a petition for recertification from the school and will immediately withdraw the school's certification if the school does not petition for recertification, abandons its petition, or does not submit a complete recertification petition package by the certification expiration date, in accordance with the automatic withdrawal criteria in 8 CFR 214.4(a)(3). The school must comply with 8 CFR 214.4(i) upon withdrawal.

(iii) *School recertification process*—(A) *General.* School recertification reaffirms the petitioning school's eligibility for SEVP certification and the school's compliance with recordkeeping, retention, reporting and other requirements of paragraphs (f), (g), (j), (k), and (l) of this section since its previous certification.

(B) *Compliance.* Assessment by SEVP of a school petitioning for recertification will focus primarily on overall school compliance, but may also include examination of individual DSO compliance as data and circumstances warrant. Past performance of these individuals, whether or not they continue to serve as principal designated school officials (PDSOs) or DSOs, will be considered in any petition for recertification of the school.

(C) *On-site review for recertification.* All schools are subject to on-site review, at the discretion of SEVP, in conjunction with recertification. The school must comply with and complete an on-site review within 30 days of the notification by a DHS representative of a school that it has been selected for an on-site review for recertification, or the petition for recertification will be denied as abandoned, resulting in the school's withdrawal from SEVIS.

(iv) *Recertification approval.* SEVP will issue a notice of approval if a school's petition for recertification is approved. The date of the subsequent recertification review will be two years after the school's certification expiration date from this petition cycle.

(v) *Recertification denial.* SEVP will issue a notice of denial if a school's petition for recertification is denied, in accordance with 8 CFR 103.3.

(vi) *Adjustment of certification expiration date.* Schools eligible for recertification before [Insert date 180 days from date of publication of the final rule in the **Federal Register**] will, at a minimum, have their certification expiration date extended to [Insert date 180 days from the date of publication of the final rule in the **Federal Register**]. SEVP may extend the certification expiration date beyond this date during the first cycle of recertification.

(3) *Out-of-cycle review and oversight of SEVP-certified schools.* (i) SEVP will determine if out-of-cycle review is required upon receipt in SEVIS of any changes from an SEVP-certified school to its Form I–17 information. The Form I–17 information that requires out-of-cycle review when changed includes:

(A) Approval for attendance of students (F/M/both);

(B) Name of school system; name of main campus;

(C) Mailing address of the school;

(D) Location of the school;

(E) School type;

(F) Public/private school indicator;

(G) Private school owner name;

(H) The school is engaged in;

(I) The school operates under the following Federal, State, Local or other authorization;

(J) The school has been approved by the following national, regional, or state accrediting association or agency;

(K) Areas of study;

(L) Degrees available from the school;

(M) If the school is engaged in elementary or secondary education;

(N) If the school is engaged in higher education;

(O) If the school is engaged in vocational or technical education;

(P) If the school is engaged in English language training;

(Q) Adding or deleting campuses;

(R) Campus name;

(S) Campus mailing address; and

(T) Campus location address.

(ii) SEVP may request a school to electronically update all Form I–17 fields in SEVIS and provide SEVP with documentation supporting the update. The school must complete such updates in SEVIS and submit the supporting documentation to SEVP within 10 business days of the request from SEVP.

(iii) SEVP may review a school's certification at any time to verify the school's compliance with the recordkeeping, retention, reporting and other requirements of paragraphs (f), (g), (j), (k), and (l) of this section to verify the school's continued eligibility for SEVP certification pursuant to paragraph (a)(3) of this section. SEVP may initiate remedial action with the school, as appropriate, and may initiate withdrawal proceedings against the school pursuant to 8 CFR 214.4(b) if noncompliance or ineligibility of a school is identified.

(iv) *On-site review.* SEVP-certified schools are subject to on-site review at any time. SEVP will initiate withdrawal proceedings against the school, pursuant to 8 CFR 214.4(b), if a certified school selected for on-site review prior to its certification expiration date fails to comply with and complete the review within 30 days of the date SEVP contacted the school to arrange the review.

(v) *Notice of Continued Eligibility.* SEVP will issue the school a notice of continued eligibility if, upon completion of an out-of-cycle review, SEVP determines that the school remains eligible for certification. Such notice will not change the school's previously-determined certification expiration date unless specifically notified by SEVP.

(vi) *Withdrawal of certification.* SEVP will institute withdrawal proceedings in accordance with 8 CFR 214.4(b) if, upon completion of an out-of-cycle review, SEVP determines that a school or its programs are no longer eligible for certification.

(vii) *Voluntary withdrawal.* A school can voluntarily withdraw from SEVP certification at any time or in lieu of complying with an out-of-cycle review or request. Failure of a school to comply with an out-of-cycle review or request by SEVP will be treated as a voluntary withdrawal. A school must initiate voluntary withdrawal by sending a request for withdrawal on official school letterhead to SEVP.

(i) *Administration of student regulations.* DHS officials may conduct out-of-cycle, on-site reviews on the campuses of SEVP-certified schools to determine whether nonimmigrant students on those campuses are complying with DHS regulations pertaining to them, including the requirement that each maintains a valid passport. DHS officers will take appropriate action regarding violations of the regulations by nonimmigrant students.

* * * * *

(k) *Issuance of Certificate of Eligibility.* A DSO of an SEVP-certified school must sign any completed Form I–20 issued for either a prospective or continuing student or a dependent. A Form I–20 issued by a certified school system must state which school within the system the student will attend. Only a DSO of an SEVP-certified school may issue a Form I–20 to a prospective student and his or her dependents, and only after the following conditions are met:

* * * * *

(l) * * *

(1) * * *

(ii) Each campus must have one PDSO. The PDSO is responsible for updating SEVIS to reflect the addition or deletion of any DSO on his or her associated campus. SEVP will use the PDSO as the point of contact on any issues that relate to the school's compliance with the regulations, as well as any system alerts generated by SEVIS. SEVP may also designate certain functions in SEVIS for use by the PDSO only. The PDSO of the main campus is the only DSO authorized to submit a Form I–17 for recertification. The PDSO and DSO will share the same responsibilities in all other respects.

* * * * *

(2) *Name, title, and sample signature.* Petitions for SEVP certification, review and recertification must include the names, titles, and sample signatures of designated officials. An SEVP-certified school must update SEVIS upon any changes to the persons who are principal or designated officials, and furnish the name, title and e-mail address of any new official within 21 days of the change. Any changes to the PDSO or DSO must be made by the PDSO within 21 days of the change. DHS may, at its discretion, reject the submission of any individual as a DSO or withdraw a previous submission by a school of an individual.

* * * * *

5. Section 214.4 is amended by:

a. Revising the section heading;

b. Revising paragraph (a)(1);

c. Redesignating paragraphs (a)(2) and (a)(3) as paragraphs (a)(3) and (a)(4) respectively;

d. Adding a new paragraph (a)(2);

e. Revising newly designated paragraph (a)(3);

f. Revising paragraph (b);

g. Revising paragraph (g); and by

h. Adding paragraph (i).

The revisions and addition read as follows:

§ 214.4 Denial of certification, denial of recertification or withdrawal of SEVP certification.

(a) * * *

(1) *Denial of certification.* The petitioning school will be notified of the reasons and appeal rights if a petition for certification is denied, in accordance with the provisions of 8 CFR 103.3. A petitioning school denied certification may file a new petition for certification at any time.

(2) *Denial of recertification or withdrawal on notice.* The school must

wait at least one calendar year from the date of denial of recertification or withdrawal on notice before being eligible to petition again for SEVP certification if a school's petition for recertification is denied by SEVP pursuant to 8 CFR 214.3(h)(3)(v), or its certification withdrawn on notice pursuant to paragraph (b) of this section. Eligibility to re-petition will be at the discretion of the Director of SEVP. A school or school system's SEVP certification for the attendance of nonimmigrant students, pursuant to sections 101(a)(15)(F)(i) and/or 101(a)(15)(M)(i) of the Immigration and Nationality Act, will be withdrawn on notice subsequent to out-of-cycle review, or recertification denied, if the school or school system is determined to no longer be entitled to certification for any valid and substantive reason including, but not limited to, the following:

(i) Failure to comply with 8 CFR 214.3(g)(1) without a subpoena.

(ii) Failure to comply with 8 CFR 214.3(g)(2).

(iii) Failure of a DSO to notify SEVP of the attendance of an F–1 transfer student as required by 8 CFR 214.2(f)(8)(ii).

(iv) Failure of a DSO to identify on the Form I–20 which school within the system the student must attend, in compliance with 8 CFR 214.3(k).

(v) Willful issuance by a DSO of a false statement, including wrongful certification of a statement by signature, in connection with a student's school transfer or application for employment or practical training.

(vi) Conduct on the part of a DSO that does not comply with the regulations.

(vii) The designation as a DSO of an individual who does not meet the requirements of 8 CFR 214.3(l)(1).

(viii) Failure to provide SEVP paper copies of the school's Form I–17 bearing the names, titles, and signatures of DSOs as required by 8 CFR 214.3(l)(2).

(ix) Failure to submit statements of DSOs as required by 8 CFR 214.3(l)(3).

(x) Issuance of Forms I–20 to students without receipt of proof that the students have met scholastic, language, or financial requirements as required by 8 CFR 214.3(k)(2).

(xi) Issuance of Forms I–20 to aliens who will not be enrolled in or carry full courses of study, as defined in 8 CFR 214.2(f)(6) or 214.2(m)(9).

(xii) Failure to operate as a bona fide institution of learning.

(xiii) Failure to employ adequate qualified professional personnel.

(xiv) Failure to limit advertising in the manner prescribed in 8 CFR 214.3(j).

(xv) Failure to maintain proper facilities for instruction.

(xvi) Failure to maintain accreditation or licensing necessary to qualify graduates as represented in the school's Form I–17.

(xvii) Failure to maintain the physical plant, curriculum, and teaching staff in the manner represented in the Form I–17.

(xviii) Failure to comply with the procedures for issuance of Forms I–20 as set forth in 8 CFR 214.3(k).

(xix) Failure of a DSO to notify SEVP of material changes, such as changes to the school's name, address, or curriculum, as required by 8 CFR 214.3(f)(1).

(3) *Automatic withdrawal.* A school that is automatically withdrawn and subsequently wishes to enroll nonimmigrant students in the future may file a new petition for SEVP certification at any time. The school must use the certification petition procedures described in 8 CFR 214.3(h)(1) to gain access to SEVIS for submitting its petition. Past compliance with the recordkeeping, retention, reporting and other requirements of 8 CFR 214.3(f), (g), (j), (k), and (l), and with the requirements for transition of students under paragraph (i) of this section will be considered in the evaluation of a school's subsequent petition for certification. SEVP certification will be automatically withdrawn:

(i) As of the date of termination of operations, if an SEVP-certified school terminates its operations.

(ii) As of a school's certification expiration date, if an SEVP-certified school does not submit a completed recertification petition in the manner required by 8 CFR 214.3(h)(2).

(iii) Sixty days after the change of ownership if an SEVP-certified school changes ownership, unless the school files a new petition for SEVP certification, in accordance with the procedures at 8 CFR 214.3(h)(1), within 60 days of the change of ownership. SEVP will review the petition if the school properly files such petition to determine whether the school still meets the eligibility requirements of 8 CFR 214.3(a)(3) and is still in compliance with the recordkeeping, retention, reporting and other requirements of 8 CFR 214.3 (f), (g), (j), (k), and (l). SEVP will institute withdrawal proceedings in accordance with paragraph (b) of this section if, upon completion of the review, SEVP finds that the school is no longer eligible for certification, or is not in compliance with the recordkeeping, retention, reporting and other requirements of 8 CFR 214.3 (f), (g), (j), (k), and (l).

(iv) If an SEVP-certified school voluntarily withdraws from its certification.

(b) *Withdrawal on notice.* SEVP will initiate an out-of-cycle review and serve the school's PDSO with a Notice of Intent to Withdraw (NOIW) if SEVP has information that a school or school system may no longer be entitled to SEVP certification prior to the school being due for its two-year recertification. The NOIW will inform the school of:

(1) The grounds for withdrawing SEVP certification.

(2) The 30-day deadline from the date of the service of the NOIW for the school to submit sworn statements, and documentary or other evidence, to rebut the grounds for withdrawal of certification in the NOIW. An NOIW is not a means for the school to submit evidence that it should have previously submitted as a part of its established reporting requirements.

(3) The school's right to submit a written request (including e-mail) within 30 days of the date of service of the NOIW for a telephonic interview in support of its response to the NOIW.

* * * * *

(g) *Decision.* The decision of SEVP will be in accordance with 8 CFR 103.3(a)(1).

* * * * *

(i) *Operations at a school when SEVP certification is relinquished or withdrawn, or whose recertification is denied and on the SEVIS access termination date*—(1) *General.* A school whose certification is relinquished or withdrawn, or whose recertification is denied may, at SEVP discretion, no longer be able to create Initial student records or issue new Forms I–20, Certificate of Eligibility for Nonimmigrant Student, for initial attendance. Schools must comply with the instructions given in the notice of withdrawal or denial with regard to management of status for their Initial and continuing F and/or M students. All other SEVIS functionality, including event reporting for students, will remain unchanged until the school's SEVIS access termination date. The school must continue to comply with the recordkeeping, retention, reporting and other requirements of 8 CFR 214.3(f), (g), (j), (k), and (l) until its SEVIS access termination date.

(2) *SEVIS access termination.* In determining the SEVIS access termination date, SEVP will consider the impact that such date will have upon SEVP, the school, and the school's

nonimmigrant students in determining the SEVIS access termination date. SEVP will not determine a SEVIS access termination date for that school until the appeals process has concluded and the initial denial or withdrawal has been upheld unless a school whose certification is withdrawn or whose recertification is denied is suspected of criminal activity or poses a potential national security threat. The school will no longer be able to access SEVIS, and SEVP will automatically terminate any remaining Active SEVIS records for that school on the SEVIS access termination date.

(3) *Legal obligations and ramifications for a school and its DSOs when a school is having SEVP certification denied or withdrawn.* Schools are obligated to their students to provide the programs of study to which they have committed themselves in the students' application for enrollment and acceptance process. Schools are obligated to the U.S. government to comply with the recordkeeping, retention, reporting and other requirements contained in 8 CFR 214.3. With any new petition for SEVP certification, SEVP will consider the extent to which a school has fulfilled these obligations to students and the U.S. government during any previous period of SEVP certification.

6. Section 214.13 is amended by revising paragraph (a), to read as follows:

§ 214.13 SEVIS fee for certain F, J, and M nonimmigrants.

(a) *Applicability.* The following aliens are required to submit a payment in the amount indicated for their status to the Student and Exchange Visitor Program (SEVP) in advance of obtaining nonimmigrant status as an F or M student or J exchange visitor, in addition to any other applicable fees, except as otherwise provided for in this section:

(1) An alien who applies for F–1 or F–3 status in order to enroll in a program of study at an SEVP-certified institution of higher education, as defined in section 101(a) of the Higher Education Act of 1965, as amended, or in a program of study at any other SEVP-certified academic or language-training institution including private elementary and secondary schools and public secondary schools, the amount of $200;

(2) An alien who applies for J–1 status in order to commence participation in an exchange visitor program designated by the Department of State (DOS), the amount of $180, with a reduced fee for certain exchange visitor categories as provided in paragraphs (b)(1) and (c) of this section; and

(3) An alien who applies for M–1 or M–3 status in order to enroll in a program of study at an SEVP-certified vocational educational institution, including a flight school, in the amount of $200.

* * * * *

Michael Chertoff,

Secretary.

[FR Doc. E8–8261 Filed 4–18–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

9 CFR Part 201

RIN 0580–AA99

Weighing, Feed, and Swine Contractors

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Proposed rule; notice of reopening of comment period.

SUMMARY: We published a notice of proposed rulemaking in the **Federal Register** on February 11, 2008 (73 FR 7686), asking for comments on proposed amendments to four existing scales and weighing regulations issued under the Packers and Stockyards Act (P&S Act). The notice provided an opportunity for interested parties to submit written comments to Grain Inspection, Packers and Stockyards Administration (GIPSA) until April 11, 2008. In response to a request from the poultry industry, we are reopening and extending the comment period to provide interested parties with additional time in which to comment.

DATES: The comment period for the proposed rule published at 73 FR 7686, February 11, 2008, which originally closed on April 11, 2008, is reopened and extended through May 21, 2008. We will consider comments that we receive by May 21, 2008.

ADDRESSES: We invite you to submit comments on this notice of proposed rulemaking. You may submit comments by any of the following methods:

- E-Mail: Send comments via electronic mail to *comments.gipsa@usda.gov*.
- Mail: Send hardcopy written comments to Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1643–S, Washington, DC 20250–3604.
- Fax: Send comments by facsimile transmission to: (202) 690–2755.
- Hand Delivery or Courier: Deliver comments to: Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1643–S, Washington, DC 20250–3604.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- Instructions: All comments should make reference to the date and page number of the February 11, 2008, issue of the **Federal Register**. [73 FR 7686]
- Read Comments: All comments will be available for public inspection in the above office during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: S. Brett Offutt, Director, Policy and Litigation Division, P&SP, GIPSA, 1400 Independence Avenue, SW., Washington, DC 20250–3646, (202) 720–7363, *s.brett.offutt@usda.gov*.

SUPPLEMENTARY INFORMATION: GIPSA published a notice of proposed rulemaking in the **Federal Register** on February 11, 2008 (73 FR 7686), seeking public comment on proposed amendments to 9 CFR part 201. The comment period of 60 days from the date of publication closed on April 11, 2008. GIPSA has received a request from the poultry industry to provide interested parties additional time to comment. In response, the comment period is reopened for an additional 30-day period. Any comments submitted after the close of the original comment period on April 11, 2008, but prior to the date of publication of this notice in the **Federal Register** will also be considered. All comments submitted between February 11, 2008 and May 21, 2008 will be considered.

Dated: April 14, 2008.

Alan Christian,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. E8–8554 Filed 4–18–08; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM391; Notice No. 25–08–05–SC]

Special Conditions: Embraer S.A., Model ERJ 190–100 ECJ Airplane; Flight-Accessible Class C Cargo Compartment

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for the Embraer S.A. Model ERJ 190–100 ECJ airplane. This airplane will have novel or unusual design features associated with access during flight of the main deck Class C cargo compartment. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Comments must be received on or before May 12, 2008.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–113), Docket No. NM391, 1601 Lind Avenue, SW., Renton, Washington, 98057–3356. You may deliver two copies to the Transport Airplane Directorate at the above address. You must mark your comments: Docket No. NM391. You may inspect comments in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Jayson Claar, FAA, Airframe/Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 980557–3356; telephone 425–227–2194; facsimile 425–227–1232.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. You can inspect the docket before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

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

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

Background

Embraer made the original application for certification of the ERJ 190 on May 20, 1999. The Embraer application includes six different models, the initial variant being designated as the ERJ 190–100. The application was submitted concurrently with that for the ERJ 170–100, which received an FAA Type Certificate (TC) on February 20, 2004. Although the applications were submitted as two distinct type certificates, the airplanes share the same conceptual design and general configuration. On July 2, 2003, Embraer submitted a request for an extension of its original application for the ERJ 190 series, with a new application date of May 30, 2001, for establishing the type certification basis. The FAA certification basis was adjusted to reflect this new reference date. In addition, Embraer has elected to voluntarily comply with certain 14 CFR part 25 amendments introduced after the May 30, 2001, application date.

On May 30, 2001, Embraer S.A. applied for an amendment to Type Certificate No. A57NM to include the new Embraer Model ERJ 190–100 ECJ. The ERJ 190–100 ECJ is a derivative of the Embraer ERJ 190 which is approved under Type Certificate No. A57NM. The ERJ 190–100 ECJ is a low wing, transport-category aircraft powered by two wing-mounted General Electric CF34–10E6 turbofan engines. The airplane is a 19-passenger regional jet with a maximum take off weight of 54,500 kilograms (120,151 pounds). The maximum operating altitude and speed are 41,000 feet and 320 knots calibrated air speed (KCAS)/0.82 MACH, respectively. The ERJ 190–100 ECJ design includes an accessible main deck Class C cargo compartment.

The regulations consider that a ''cargo compartment'' is not intended for access during flight by the traveling public. The intent of the Class C cargo compartment was that it be a self-contained, isolated compartment intended to carry baggage and/or cargo. It was not intended for access during flight. Access into a cargo compartment inherently carries with it an increased level of risk as baggage or cargo could shift, a decompression could occur in the compartment, or a fire could develop during the flight. The FAA considers that any of these threats are beyond passengers' capabilities. In addition, there are security concerns with access to the checked baggage and/or cargo.

The FAA acknowledges that an allowance was made specifically for crew access into a Class B cargo compartment for the express purpose of fire fighting. Passengers' access during flight into aft Class B cargo compartments has been permitted in the past for other small aircraft that are operated under part 91 and 135 operations. Passengers' quick access to luggage has been allowed because of the limited duration for use and limited number of passengers possibly affected. These approvals were granted before the increased security concerns and the new regulations imposed by the Transportation Security Administration (TSA) to address the security concerns.

The FAA gave no consideration to a flight-accessible Class C cargo compartment when the classification was first developed, as no manufacturer had ever proposed to incorporate such a feature into their design. Inherently a ''cargo compartment'' was not intended for access, especially by the traveling public.

The FAA acknowledges that a previous Embraer airplane, the Embraer EMB 135BJ, has a flight-accessible Class C cargo compartment that was approved using an equivalent level of safety finding. The Embraer EMB 135BJ design is similar to the proposed design for the ERJ 190–100 ECJ. The EMB 135BJ approval was granted before the increased security concerns and the new regulations imposed by the TSA to address security concerns. We have determined that because the existing airworthiness standards do not contain adequate or appropriate safety standards, relative to cargo compartment accessibility by passengers during flight, special conditions are the appropriate method for this and all future accessible Class C cargo compartments.

Type Certification Basis

Under the provisions of § 21.101, Embraer S.A. must show that the Model ERJ 190–100 ECJ meets the applicable provisions of the regulations incorporated by reference in Type Certificate No. A57NM or the applicable regulations in effect on the date of

application for the change to the ERJ 190–100 ECJ. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in Type Certificate No. A57NM are as follows:

Embraer has proposed to voluntarily adopt several 14 CFR part 25 amendments that became effective after the requested new application date of May 30, 2001, specifically Amendment 25–102, except paragraph 25.981(c); Amendments 25–103 through 25–105 in their entirety; Amendment 25–107, except paragraph 25.735(h); Amendment 25–108 through 25–110 in their entirety; and Amendments 25–112 through 25–114 in their entirety.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25) do not contain adequate or appropriate safety standards for the Embraer Model ERJ 190–100 ECJ because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Embraer Model ERJ 190–100 ECJ must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in § 11.19, under § 11.38, and they become part of the type certification basis under § 21.101.

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

Novel or Unusual Design Features

The Embraer Model ERJ 190–100 ECJ will incorporate the following novel or unusual design features: an unusual design relative to those which have been certificated under 14 CFR part 25, and passenger access during flight of a Class C cargo compartment.

Discussion

The FAA considers that Class C cargo compartment access during flight may impact the isolation of the passenger cabin from the cargo compartment, which is needed to protect the passengers from any fire and smoke that may start within the cargo compartment, as required by § 25.857(c). In addition, in-flight access to the Class C compartment creates unique hazards resulting from passengers having access to cargo and baggage in the compartment. These hazards include safety for the persons entering the cargo compartment, possible hazards to the airplane as a result of this access, and the security concerns with access to the checked baggage and/or cargo. The proposed special conditions provide additional requirements necessary to ensure sufficient cabin isolation from fire and smoke in this unusual design configuration, and for passenger safety while occupying the Class C compartment during flight. In the future, the FAA position on this special condition may change due to increasing concern over airplane security.

The FAA has been in contact with the TSA to understand the security concerns with passengers having access in-flight to checked baggage and/or cargo. The TSA has provided the following information to clarify the regulations concerning access to cargo compartments by passengers.

> Aircraft operators holding operating certificates under 14 CFR part 119 for scheduled passenger operations, public charter passenger operations, private charter passenger operations must have an aircraft operator security program. For U.S. flag carriers 49 CFR 1544 regulates the operator security program. Specifically, 49 CFR 1544.101(a)–(i) describes the type of program an aircraft operator must adopt depending on the type of aircraft operation. For the vast majority of operations in-flight access to checked baggage and/or cargo by passengers is NOT permitted by the aircraft operator security program. Aircraft operators should contact their Principal Security Inspector (PSI) concerning in-flight access to checked baggage and/or cargo by passengers.

Based on this understanding of the TSA regulations, the FAA's position is that the basic approval for flight-accessible Class C cargo compartment should be limited to airplanes operated for private use, not-for-hire, not for common carriage.

For airplanes not operated for hire or offered for common carriage, flight-accessibility to check baggage and/or cargo is controlled by the operator of the airplane. This provision does not preclude the operator from receiving remuneration to the extent consistent with 14 CFR parts 125 and 91, subpart F, as applicable. These airplane operators do not hold operating certificates under 14 CFR part 119.

For Class C cargo compartments, the means of controlling a fire is by flooding the compartment with an extinguishing agent. These extinguishing agents are hazardous to humans. In the event of smoke detection, the flightcrew should ensure that the cargo compartment is not occupied before they discharge the extinguishing agent. To address this concern, a warning system is provided to the flight crew to alert them when a person is in the cargo compartment. However, the FAA's position is that the fire threat is of paramount concern, and therefore prompt crew action to fight the fire must be taken to prevent a fire from threatening the safety of the airplane.

After the extinguishing agent has been discharged into the compartment, there must be a means of alerting person(s) not to enter the compartment. It must be located adjacent to the entry/exit door that provides access into the compartment. Access into the cargo compartment must be prevented after discharge of the extinguishing agent to prevent persons being exposed to the extinguishing agent and to keep the extinguishing agent in the compartment to control the fire.

Passengers in the cabin are alerted when oxygen is needed. A person in the cargo compartment would not be alerted when oxygen is needed. To address this concern, an aural and visual indication system within the cargo compartment is required to alert the person(s) that oxygen is required. An oxygen dispensing unit must be provided adjacent to the entry door into the cargo compartment to have oxygen readily available for the person leaving the compartment. The oxygen supply lines must not be routed into the cargo compartment because that would provide a source of oxygen to the cargo which would feed a fire.

If a net is used as the primary means of retention of the cargo, an untrained person accessing a cargo compartment may not be capable of securing the net correctly to maintain the retention of the cargo. The improperly restrained cargo could be a hazard in flight to the safe operation of the airplane and a hazard to the occupants under crash load conditions.

Applicability

As discussed above, these special conditions are applicable to the ERJ 190–100 ECJ. Should Embraer S.A. apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Certification of the ERJ 190–100 ECJ is currently scheduled for June 2008. The substance of these special conditions

has been subject to the notice and public comment procedure in several prior instances. Therefore, because a delay would significantly affect the applicant's installation of the system and certification of the airplane, we are shortening the public comment period to 20 days.

Conclusion

This action affects only certain novel or unusual design features on Model ERJ 190–100 ECJ airplanes. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

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

The Special Conditions

Therefore, under the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for the Embraer S.A. Model ERJ 190–100 ECJ.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for Embraer S.A. Model ERJ 190–100 ECJ airplanes.

1. There must be a clear, visual message in the cockpit to advise the flightcrew when the main deck Class C cargo compartment is occupied.

2. There must be means provided to keep the cargo door open while the cargo compartment is occupied. There must be a placard located on or adjacent to the cargo door instructing occupants that the door must be closed and latched at all times except when someone is in the cargo compartment. This placard must also instruct the person entering the cargo compartment to keep the door open when they are in the cargo compartment and to immediately close and latch the door when they exit the cargo compartment.

3. There must be a (on/off) visual advisory/warning stating ''Do Not Enter'' (or similar words) to be located outside of and on or near the main entry door/hatch to the main deck cargo compartment. The advisory/warning is to be controlled from the flight deck.

4. There must be an aural and visual warning provided in the baggage compartment to alert an occupant when an oxygen mask must be donned immediately.

5. Oxygen dispensing units must be automatically presented and immediately available to an occupant(s) of the baggage compartment. For these special conditions, immediately available means the oxygen dispensing units are located in the passenger cabin near the main entry door/hatch to the main deck cargo compartment (no oxygen supply lines are allowed to be routed into the compartment). The number of oxygen dispensing units must be equal to the number of occupants allowed in the cargo compartment. There must be a placard located on or adjacent to the cargo door instructing occupants of the maximum number of occupants allowed in the cargo compartment.

6. For cargo and baggage placed in the baggage compartment whose primary retention means is by net, the net must be constructed so that the means of opening and closing or securing the net is easily identified and operated.

7. These special conditions apply to main deck accessible Class C cargo compartments with volumes of 10 m^3 or less. Class C cargo compartments that are accessible to passengers with a volume greater than 10 m^3 may be approved, but would likely require additional limitations or provisions to mitigate the larger volume. Note that there may also be a maximum volume above which access is not acceptable.

8. The airplane is not operated for hire or offered for common carriage. This provision does not preclude the operator from receiving remuneration to the extent consistent with 14 CFR parts 125 and 91, subpart F, as applicable.

Issued in Renton, Washington, on April 11, 2008.

Philip L. Forde,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–8582 Filed 4–18–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM390; Notice No. 25–08–04–SC]

Special Conditions: Embraer S.A., Model ERJ 190–100 ECJ Airplane; Fire Protection

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for the Embraer S.A. Model ERJ 190–100 ECJ airplane which has a novel and unusual design feature, in that it features multiple electrical/electronic equipment bays that are located throughout the airplane. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards. Additional special conditions will be issued for other novel or unusual design features of the Embraer S.A. Model ERJ 190–100 ECJ airplane.

DATES: Comments must be received on or before May 12, 2008.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–113), Docket No. NM390, 1601 Lind Avenue, SW., Renton, Washington 98057–3356. You may deliver two copies to the Transport Airplane Directorate at the above address. You must mark your comments: Docket No. NM390. You may inspect comments in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Stephen Happenny, FAA, Propulsion/Mechanical Branch, ANM–112, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone 425–227–2147; facsimile 425–227–1232.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. You can inspect the docket before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for

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

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

Background

Embraer made the original application for certification of the ERJ 190 on May 20, 1999. The Embraer application includes six different models, the initial variant being designated as the ERJ 190–100. The application was submitted concurrently with that for the ERJ 170–100, which received an FAA Type Certificate (TC) on February 20, 2004. Although the applications were submitted as two distinct type certificates, the airplanes share the same conceptual design and general configuration. On July 2, 2003, Embraer submitted a request for an extension of its original application for the ERJ 190 series, with a new application date of May 30, 2001, for establishing the type certification basis. The FAA certification basis was adjusted to reflect this new application date. In addition, Embraer has elected to voluntarily comply with certain 14 CFR part 25 amendments introduced after the May 30, 2001, application date.

On May 30, 2001, Embraer S.A. applied for an amendment to Type Certificate No. A57NM to include the new Embraer Model ERJ 190–100 ECJ. The ERJ 190–100 ECJ is a derivative of the Embraer ERJ 190 which is approved under Type Certificate No. A57NM. The ERJ 190–100 ECJ is a low wing, transport-category aircraft powered by two wing-mounted General Electric CF34–10E6 turbofan engines. The airplane is a 19 passenger regional jet with a maximum take off weight of 54,500 kilograms (120,151 pounds). The maximum operating altitude and speed are 41,000 feet and 320 knots calibrated air speed (KCAS)/0.82 MACH, respectively. The ERJ 190–100 ECJ design includes multiple electrical/electronic equipment bays that are located throughout the airplane.

Existing regulations in §§ 25.855, 25.857 and 25.858 require that certain design features be incorporated into cargo compartments; require cargo compartments have a means to exclude hazardous quantities of smoke or fire extinguishing agent from penetrating into occupied areas of the airplane; and, require that smoke detectors be present. However, there are no requirements that address preventing hazardous quantities of smoke or extinguishing agent originating from the electrical/electronic equipment bays from penetrating into occupied areas of the airplane; or requiring that smoke or fire detectors be installed in electrical/electronic equipment bays.

The FAA believes that a means to detect smoke is needed in all electrical/electronic equipment bays on the Embraer 190–100 ECJ to ensure that the flightcrew can make an informed decision as to the source of smoke and can shut down electrical equipment when smoke is detected in the electrical/electronic equipment bays.

Type Certification Basis

Under the provisions of § 21.101, Embraer S.A. must show that the Model ERJ 190–100 ECJ meets the applicable provisions of the regulations incorporated by reference in Type Certificate No. A57NM or the applicable regulations in effect on the date of application for the change to the ERJ 190–100 ECJ. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in Type Certificate No. A57NM are as follows:

Embraer has proposed to voluntarily adopt several 14 CFR part 25 amendments that became effective after the requested new application date of May 30, 2001, specifically Amendment 25–102, except paragraph 25.981(c); Amendments 25–103 through 25–105 in their entirety; Amendment 25–107, except paragraph 25.735(h); Amendment 25–108 through 25–110 in their entirety; and Amendments 25–112 through 25–114 in their entirety.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25) do not contain adequate or appropriate safety standards for the Embraer Model ERJ 190–100 ECJ because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Embraer Model ERJ 190–100 ECJ must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in § 11.19, under § 11.38, and they become part of the type certification basis under § 21.101.

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

Novel or Unusual Design Features

The Embraer Model ERJ 190–100 ECJ will incorporate the following novel or unusual design feature: Multiple electrical/electronic equipment bays located in the lower lobe and on the main deck of the airplane. These bays are an unusual design relative to those which have been previously certificated under 14 CFR part 25. The number and location of the electrical/electronic equipment bays on the ERJ 190–100 ECJ may contribute to an increased risk of smoke affecting passengers and crew.

Discussion

Section 25.855 contains the material standards and design considerations for cargo compartment interiors; the statement that each cargo compartment must meet one of the class requirements of § 25.857; and the flight tests which must be conducted for certification. Section 25.857 provides the standards for the various classes of transport category airplane cargo compartments including a smoke detector; means to shutoff the ventilating airflow; and a means to exclude hazardous quantities of smoke or fire extinguishing agent from penetrating into occupied areas of the airplane. Section 25.858 requires certain provisions be made for smoke detection. However, there are no requirements that address the following:

- Preventing hazardous quantities of smoke or extinguishing agent originating from the electrical/electronic equipment bays from penetrating into occupied areas of the airplane; or
- Installing smoke or fire detectors in electrical equipment bays.

Generally, transport category airplanes have one or two electrical/electronic equipment bays located in the lower lobe, adjacent to pressure regulator/outflow valves. If there were smoke in an electrical/electronic equipment bay, in most cases it is expected to be drawn toward the outflow valves and be discharged from the airplane without entering occupied areas. In the ERJ 190–100 ECJ, the electrical/electronic equipment bays are distributed throughout the airplane.

Only those equipment bays located in the lower lobe of the airplane are considered to be adjacent to pressure regulator/outflow valves.

For this combination of electrical/electronic equipment bays distributed throughout the airplane the applicable airworthiness regulations do not contain adequate or appropriate safety standards regarding smoke detection and control of smoke penetration. Based upon its review of incidents of smoke in the passenger cabin, the FAA determined that an airplane with electrical/electronic equipment bays located below, on, and above the main deck of an airplane presents a greater risk of smoke penetration than older designs with electrical/electronic bays only in the lower lobe adjacent to pressure regulator/outflow valves.

In the event of a fire, airplanes with older designs rely upon ''trial and error'' to determine whether the source of fire or smoke is in the electrical equipment bay. Typically, this involves the pilots following approved procedures in the Airplane Flight Manual. Those procedures may involve shutting down power to the avionics equipment in one electrical/electronic equipment bay and reconfiguring the airplane's environmental control system (e.g., shutting down the recirculation fan) to see whether the amount of smoke in the flightdeck or passenger compartment is reduced or eliminated. If these actions do not eliminate the smoke, the flight crew may turn the power back on in the one electrical/electronic equipment bay, shut it off in the other equipment bay, and reconfigure the environmental control system again to see whether the smoke is now reduced or eliminated.

This approach may be acceptable for airplanes with no more than two electrical/electronic equipment bays, both located in the lower lobe. In that case, there are only two options: the smoke or fire in an electrical equipment bay is in either one or the other. However, for an airplane with electrical equipment bays located below, on, and above decks, this approach is not sufficient, because—in the time it takes to determine the source of smoke—a fire could spread and the quantity of smoke could increase significantly.

Furthermore, the ''trial and error'' approach raises concern over the lack of informational awareness that a flight crew would have should smoke penetration occur. Many factors—including the airflow pattern, configuration changes in the environmental control system, potential leak paths, and location of outflow/regulator valves—would make it difficult to identify a smoke source, especially during flight or system transients, such as climbing/descending or changes in ventilation.

The FAA believes that smoke detectors are needed in all electrical/electronic equipment bays on the ERJ 190–100 ECJ to ensure that the flightcrew can make an informed decision as to the source of smoke and can shut down the specific electrical/electronic equipment bay from which the smoke is coming.

These special conditions, therefore, require that there be a smoke or fire detection system in each electrical/electronic equipment bay. They also include requirements to prevent propagation of hazardous quantities of smoke or fire extinguishing agent between or throughout the passenger cabins on the main deck and the upper deck.

The FAA believes that a means to detect smoke is needed in all electrical/electronic equipment bays on the Embraer 190–100 ECJ to ensure that the flightcrew can make an informed decision as to the source of smoke and can shut down electrical equipment when smoke is detected in the electrical/electronic equipment bays.

Therefore, the FAA is proposing a special condition that includes requirements to prevent propagation of smoke or extinguishing agents between or throughout cabins and to provide smoke or fire detection for electrical/electronic equipment bays.

Applicability

As discussed above, these special conditions are applicable to the ERJ 190–100 ECJ. Should Embraer S.A. apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Certification of the ERJ 190–100 ECJ is currently scheduled for June 2008. The substance of these special conditions has been subject to the notice and public comment procedure in several prior instances. Therefore, because a delay would significantly affect the applicant's installation of the system and certification of the airplane, we are shortening the public comment period to 20 days.

Conclusion

This action affects only certain novel or unusual design features on Model ERJ 190–100 ECJ airplanes. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

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

The Special Conditions

Therefore, under the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for the Embraer S.A. Model ERJ 190–100 ECJ.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for Embraer S.A. Model ERJ 190–100 ECJ airplanes.

1. Requirements to prevent propagation of smoke or extinguishing agents from entering the flight deck and passenger cabin:

(a) To prevent such propagation the following must be demonstrated: a means to prevent hazardous quantities of smoke or extinguishing agent originating from the electrical equipment bays from incapacitating passengers and crew.

(b) A ''small quantity'' of smoke may enter an occupied area only under the following conditions:

(1) The smoke enters occupied areas during system transients [1] from a source located below the flight deck and passenger cabin or on the same level as the flight deck and passenger cabin. No sustained smoke penetration beyond that from environmental control system transients is permitted.

(2) Penetration of the small quantity of smoke is a dynamic event, involving either dissipation or mobility. Dissipation is rapid dilution of the smoke by ventilation air, and mobility is rapid movement of the smoke into and out of the occupied area. In no case, should there be formation of a light haze indicative of stagnant airflow, as this would indicate that the ventilation system is failing to meet the requirements of § 25.831(b).

[1] Transient airflow conditions may cause air pressure differences between compartments, before the ventilation and pressurization system is reconfigured. Additional transients occur during changes to system configurations such as pack shut-down, fan shut-down, or changes in cabin altitude; transition in bleed source change, such as from intermediate stage to high stage bleed air; and cabin pressurization ''fly-through'' during descent may reduce air conditioning inflow. Similarly, in the event of a fire, a small quantity of smoke that penetrates into an occupied area before the ventilation system is reconfigured would be acceptable under certain conditions described within this special condition.

(3) The smoke from a smoke source below the flight deck and passenger cabin must not rise above armrest height on the main deck.

(4) The smoke from a source on the same level as the flight deck and passenger cabin must dissipate rapidly via dilution with fresh air and be evacuated from the airplane. A procedure must be included in the Airplane Flight Manual to evacuate smoke from the occupied areas of the airplane. In order to demonstrate that the quantity of smoke is small, a flight test must be conducted which simulates the emergency procedures used in the event of a fire during flight, including the use of V_{mo}/M_{mo} descent profiles and a simulated landing, if such conditions are specified in the emergency procedure.

2. Requirement for fire detection in electrical/electronic equipment bays:

(a) A smoke or fire detection system compliant with §§ 25.858 and 25.855 must be provided that will detect fire/smoke within each electrical/electronic equipment bay.

(b) Each system must provide a visual indication to the flight deck within one minute after the start of a fire in an electrical/electronic equipment bay.

(c) Airplane flight tests must be conducted to show compliance with these requirements, and the performance of the smoke or fire detectors must be shown in accordance with guidance provided in the latest version of Advisory Circular 25–9, or other means acceptable to the FAA.

(d) A procedure to shut down all non-essential systems in the electrical/electronic equipment bays following a smoke detection in any electrical/electronic equipment bay must be included in the Airplane Flight Manual.

Issued in Renton, Washington, on April 11, 2008.

Philip L. Forde,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–8577 Filed 4–18–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

[Docket No. OSHA–2007–0026]

RIN 1218–AB47

Confined Spaces in Construction

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Proposed rule; notice of hearing.

SUMMARY: OSHA is convening an informal public hearing to receive testimony and documentary evidence on the proposed rule for Confined Spaces in Construction.

DATES: *Informal Public Hearing.* The Agency will hold the informal public hearing in Washington, DC beginning July 22, 2008. The hearing will commence at 10 a.m. on the first day. If necessary, a second or third day will be scheduled. The hearing will begin at 9 a.m. on subsequent days.

Notice of intention to appear to provide testimony at the informal public hearing. Parties who intend to present testimony at the informal public hearing must notify OSHA in writing of their intention to do so no later than May 21, 2008.

Hearing Testimony and Documentary Evidence. Parties who are requesting more than 10 minutes to present their testimony, or who will be submitting documentary evidence at the hearing, must provide the Agency with copies of their full testimony and all documentary evidence they plan to present by June 20, 2008.

ADDRESSES: *Informal Public Hearing.* The informal public hearing will be held in Washington, DC, in the auditorium on the plaza level of the Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC.

Notices of intention to appear at the hearing, hearing testimony, and documentary evidence. Submit notices of intention to appear at the informal public hearing, hearing testimony, and documentary evidence, identified by the docket number (OSHA 2007–0026) or the regulatory information number (RIN; 1218–AB47), using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting the material.
- *Facsimile:* Send submissions consisting of 10 or fewer pages to the OSHA Docket Office at (202) 693–1648. Hard copies of these documents are not required. Instead of transmitting facsimile copies of attachments that supplement these documents (*e.g.*, studies, journal articles), submit these attachments, in triplicate hard copy, to the OSHA Docket Office, Technical Data Center, Room N–2625, OSHA, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210. These attachments must clearly identify the sender's name, date, subject, and docket number (*i.e.*, OSHA–2007–0026) so that the agency can attach them to the appropriate document.
- *Regular mail, express delivery, hand delivery, and courier service:* Send submissions in triplicate (3 copies) to the OSHA Docket Office, Docket No. OSHA–2007–0026, Technical Data Center, Room N–2625, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350 (OSHA's TTY number is (877) 889–5627). Note that security-related problems may result in significant delays in receiving submissions by regular mail. Please contact the OSHA Docket Office for information about security procedures concerning delivery of materials by express delivery, hand delivery, or courier service. The OSHA Docket Office and Department of Labor hours of operation are 8:15 a.m. to 4:45 p.m., ET.

Instructions. All submissions must include the agency name and the OSHA docket number (*i.e.*, OSHA–2007–0026). All submissions, including any personal information, are placed in the public docket without revision, and will be available online at *http://www.regulations.gov*. Therefore, OSHA cautions members of the public against submitting information and statements that should remain private, including comments that contain personal information (either about themselves or others) such as social security numbers, birth dates, and medical data. For additional information on submitting notices of intention to appear, the text of testimony, and documentary evidence, see the Public Participation—Comments and Hearings section below.

Docket. To read or download comments or other material in the docket, go to *http://www.regulations.gov* or to the OSHA Docket Office at the address above. Documents in the docket are listed in the *http://www.regulations.gov* index. However, some information (*e.g.*, copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Contact the OSHA Docket Office for assistance in locating docket submissions, including notices of intention to appear, the text of testimony, and documentary evidence.

FOR FURTHER INFORMATION CONTACT: For general information and press inquiries, contact Ms. Jennifer Ashley, Director, Office of Communications, Room N–3647, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–1999. For technical inquiries, contact Mr. Garvin Branch, Directorate of Construction, Room N–3468, OSHA,

U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2020 or fax (202) 693–1689. For hearing information, contact Ms. Veneta Chatmon, Office of Communications, Room N–3647, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–1999. Electronic copies of this **Federal Register** notice, as well as news releases and other relevant documents, are available at OSHA's homepage at *http://www.osha.gov*.

SUPPLEMENTARY INFORMATION: OSHA published the proposed Confined Spaces in Construction Standard on November 28, 2007 (72 FR 67351). The period for submitting written comments was to expire on January 28, 2008, but was extended to February 28, 2008 (73 FR 3893). During this comment period, a number of commenters (*see, e.g.*, Exs. OSHA–2007–0026–0024.1, –0026, –0030.1, –0032, –0027, –0032, –0057) requested an informal public hearing. With this notice, OSHA is granting these requests.

Public Participation—Comments and Hearings: OSHA encourages members of the public to participate in this rulemaking by providing oral testimony and documentary evidence at the informal public hearing. Accordingly, the Agency invites interested parties having knowledge of, or experience with, the issues raised in the NPRM to participate in this process, and welcomes any pertinent data that will provide the Agency with the best available evidence to use in developing the final rule. This section describes the procedures the public must use to schedule an opportunity to deliver oral testimony and to provide documentary evidence at the informal public hearing.

Hearing Arrangements. Pursuant to section 6(b)(3) of the Occupational Safety and Health Act (the Act; 29 U.S.C. 655), members of the public have an opportunity at the informal public hearing to provide oral testimony concerning the issues raised in the NPRM. An administrative law judge (ALJ) will preside over the hearing, and will resolve any procedural matters relating to the hearing on the first day.

Purpose of the Hearing. The legislative history of Section 6 of the Act, as well as the Agency's regulation governing public hearings (29 CFR 1911.15), establish the purpose and procedures of informal public hearings. Although the presiding officer of the hearing is an ALJ, and questions by interested parties are allowed on pertinent issues, the hearing is informal and legislative in purpose. Therefore, the hearing provides interested parties with an opportunity to make effective and expeditious oral presentations in the absence of procedural restraints that could impede or protract the rulemaking process. The hearing is not an adjudicative proceeding subject to the technical rules of evidence. Instead, it is an informal administrative proceeding convened for the purpose of gathering and clarifying information. The regulations that govern the hearing, and the pre-hearing guidelines issued for the hearing, will ensure that participants are treated fairly and have due process. This approach will facilitate the development of a clear, accurate, and complete record. Accordingly, application of these rules and guidelines will be such that questions of relevance, procedures, and participation will be decided in favor of developing a complete record.

Conduct of the Hearing. Conduct of the hearing will conform to the provisions of 29 CFR 1911.5. Although the ALJ presiding over the hearing makes no decision or recommendation on the merits of the NPRM or the final rule, the ALJ has the responsibility and authority to ensure that the hearing progresses at a reasonable pace and in an orderly manner. To ensure that interested parties receive a full and fair informal hearing, the ALJ has the authority and power to: regulate the course of the proceedings; dispose of procedural requests, objections, and similar matters; confine the presentations to matters pertinent to the issues raised; use appropriate means to regulate the conduct of the parties who are present at the hearing; question witnesses, and permit others to question witnesses; and limit the time for such questions. At the close of the hearing, the ALJ will establish a post-hearing comment period for parties who participated in the hearing. During the first part of this period, the participants may submit additional data and information to OSHA, and during the second part of this period, they may submit briefs, arguments, and summations.

Notice of intention to appear to provide testimony at the informal public hearings. Hearing participants must file a notice of intention to appear that provides the following information: The name, address, and telephone number of each individual who will provide testimony; the capacity in which the individual will testify (*e.g.*, name of the establishment/organization the individual is representing; the individual's occupational title and position); approximate amount of time requested for the individual's testimony; specific issues the individual will address, including a brief description of the position that the individual will take with respect to each of these issues; and any documentary evidence the individual will present, including a brief summary of the evidence.

OSHA emphasizes that, while the hearing is open to the public and interested parties are welcome to attend, only a party who files a proper notice of intention to appear may ask questions and participate fully in the hearing. A party who did not file a notice of intention to appear may be allowed to testify at the hearing if time permits, but this determination is at the discretion of the presiding ALJ.

Hearing Testimony and Documentary Evidence. OSHA will review each submission and determine if the information it contains warrants the amount of time requested. OSHA then will allocate an appropriate amount of time to each presentation, and will notify the participants of the time allotted to their presentations. Prior to the hearing, the Agency will notify the participant if the allotted time is less than the requested time, and will provide the reasons for this action. OSHA may limit to 10 minutes the presentation of any participant who fails to comply substantially with these procedural requirements. The Agency also may request a participant to return for questions at a later time.

Certification of the record and final determination after the informal public hearing. Following the close of the hearing and post-hearing comment period, the ALJ will certify the record to the Assistant Secretary of Labor for Occupational Safety and Health. This record will consist of all of the written comments, oral testimony, documentary evidence, and other material received during the hearing. Following certification of the record, OSHA will review the proposed provisions in light of all the evidence received as part of the record, and then will issue the final determinations based on the entire record.

Authority and Signature

This document was prepared under the authority of Edwin G. Foulke, Jr., Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, pursuant to Sections 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), Secretary of Labor's Order 5–2007 (72 FR 31160), and 29 CFR part 1911.

Signed at Washington, DC this 15th day of April 2008.

Edwin G. Foulke, Jr.,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. E8–8460 Filed 4–18–08; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–0160]

RIN 1625–AA00

Safety Zone: Ocean City Air Show, Atlantic Ocean, Ocean City, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a safety zone on the Atlantic Ocean in the vicinity of Ocean City, MD in support of the Ocean City Air Show. This action is intended to restrict vessel traffic movement on the Atlantic Ocean to protect mariners from the hazards associated with the air show.

DATES: Comments and related material must reach the Coast Guard on or before May 21, 2008.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2008–0160 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) *Online: http://www.regulations.gov.*

(2) *Mail:* 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.

(3) *Hand Delivery:* Room W12–140 on the Ground Floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* 202–493–2251.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call Lieutenant Junior Grade TaQuitia Winn, Waterways Management Division, Sector Hampton Roads at (757) 668–5580. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's ''Privacy Act'' paragraph below.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2008–0160), indicate the specific section of this document to which each comment applies, and give the reason for each comment. We recommend that you include your name and a mailing address, an e-mail address, or a phone number 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 hand delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or hand 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 this proposed rule in view of them.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov* at any time, click on ''Search for Dockets,'' and enter the docket number for this rulemaking (USCG–2008–0160) in the Docket ID box, and click enter. You may also visit either the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; or the Commander, Sector Hampton Roads, Norfolk Federal Building, 200 Granby St., 7th Floor between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://DocketsInfo.dot.gov.*

Public Meeting

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

Background and Purpose

On June 9, 2008, June 10, 2008 and June 11, 2008 the town of Ocean City, MD, will sponsor an air show that is to be held on the Atlantic Ocean between 7th Street and 25th Street in Ocean City, MD. Due to the need to protect mariners and the public from the hazards associated with the air show, a safety zone bound by the following coordinates will be enforced: 38° – 20′ – 59.6″ N/075° – 03′ – 44.4″ W, 38° – 21′ – 10″ N/075° – 04′ – 19.9″ W, 38° – 20′ – 03.8″ N/075° – 04′ – 10.6″ W, 38° – 20′ – 14.1″ N/075° – 04′ – 45.6″ W (NAD 1983). Access to this area will be temporarily restricted for public safety.

Discussion of Proposed Rule

The Coast Guard proposes to establish a safety zone on the Atlantic Ocean between 7th Street and 25th Street in Ocean City, MD. This safety zone bound, by coordinates 38° – 20′ – 59.6″ N/075° – 03′ – 44.4″ W, 38° – 21′ – 10″ N/075° – 04′ – 19.9″ W, 38° – 20′ – 03.8″ N/075° – 04′ – 10.6″ W, 38° – 20′ – 14.1″ N/075° – 04′ – 45.6″ W (NAD 1983), will be established during the Ocean City Air Show and be enforced from 10 a.m. to 4 p.m. on June 9, 2008, 10 a.m. to 4 p.m. on June 10, 2008 and from 10 a.m. to 4 p.m. on June 11, 2008. In the interest of public safety, access to the safety zone will be restricted during the specified date and times. Except for participants and vessels authorized by the Captain of the Port or his Representative, no person or vessel may enter or remain in the safety zone.

Regulatory Evaluation

We developed this proposed rule after considering numerous statutes and

executive orders related to rulemaking. Below we summarize our analysis based on 13 of these statutes or executive orders.

Executive Order 12866

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. Although this regulation restricts 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; 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 proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities because the zone will only be in place for a limited duration and maritime advisories will be issued allowing the mariners to adjust their plans accordingly. However, this rule may affect the following entities, some of which may be small entities: the owners and operators of vessels intending to transit or anchor in that portion of the Atlantic Ocean from 10 a.m. to 4 p.m. on June 9, 2008, 10 a.m. to 4 p.m. on June 10, 2008 and from 10 a.m. to 4 p.m. on June 11, 2008.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Junior Grade TaQuitia Winn, Assistant Chief, Waterways Management Division, Sector Hampton Roads at (757) 668–5580. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

Energy Effects

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

Technical Standards

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

adopted by voluntary consensus standards bodies.

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is not likely to have a significant effect on the human environment. A preliminary ''Environmental Analysis Check List'' supporting this preliminary determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

Words of Issuance and Proposed Regulatory Text

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add § 165.T05–015 to read as follows:

§ 165.T05–016 Safety Zone: Ocean City Air Show, Atlantic Ocean, Ocean City, MD.

(a) *Location.* The following area is a safety zone: All waters of the Atlantic Ocean between 7th Street and 25th Street in Ocean City, MD bounded by coordinates 38° − 20′ − 59.6″ N/ 075° − 03′ − 44.4″ W, 38° − 21′ − 10″ N/ 075° − 04′ − 19.9″ W, 38° − 20′ − 03.8″ N/ 075° − 04′ − 10.6″ W, 38° − 20′ − 14.1″ N/ 075° − 04′ − 45.6″ W (NAD 1983).

(b) *Definition:* Captain of the Port Representative: means any U.S. Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Hampton Roads, Virginia to act on his behalf.

(c) *Regulation:*

(1) In accordance with the general regulations in 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, Hampton Roads or his designated representatives.

(2) The operator of any vessel in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(d) *Contact Information.* (1) The Captain of the Port, Hampton Roads may be contacted through the Sector Duty Officer at Sector Field Office Eastern Shore in Chincoteague, Virginia at telephone number (757) 336–2889.

(2) The Coast Guard Representatives enforcing the safety zone can be contacted on VHF–FM 13 and 16.

(e) *Effective Period:* This regulation will be in effect from 10 a.m. on June 9, 2008 until 4 p.m. on June 11, 2008.

Dated: March 26, 2008.

Patrick B. Trapp,

Captain, U.S. Coast Guard, Captain of the Port, Hampton Roads.

[FR Doc. E8–8469 Filed 4–18–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

United States Navy Restricted Area, Menominee River, Marinette Marine Corporation Shipyard, Marinette, WI

AGENCY: United States Army Corps of Engineers, DoD.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The Corps of Engineers is proposing to amend its regulations to establish a restricted area in the Menominee River, at the Marinette Marine Corporation Shipyard, Marinette, Wisconsin, to provide adequate protection for the Littoral Combat Ship (LCS Freedom 1) during its construction. The regulations are necessary to provide adequate protection of the ship, its materials, equipment to be installed therein, and its crew, while it is located at the property of Marinette Marine Corporation.

DATES: Written comments must be submitted on or before May 21, 2008.

ADDRESSES: You may submit comments, identified by docket number COE–2007–0033, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

E-mail: david.b.olson@usace.army.mil. Include the docket number, COE–2007–0033, in the subject line of the message.

Mail: U.S. Army Corps of Engineers, *ATTN:* CECW–CO (David B. Olson), 441 G Street, NW., Washington, DC 20314–1000.

Hand Delivery/Courier: Due to security requirements, we cannot receive comments by hand delivery or courier.

Instructions: Direct your comments to docket number COE–2007–0033. All comments received will be included in the public docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the commenter indicates that 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 Web site is an anonymous access system, which means we will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail directly to the Corps without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, we recommend 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 we cannot read your comment because of technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic comments should avoid the use of any special characters, any form of encryption, and be free of any defects or viruses.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov*. All documents in the docket are listed. Although listed in the index, some information is not publicly available, such as 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.

Consideration will be given to all comments received within 30 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, DC at (202) 761–4922, or Mr. Jon K. Ahlness, Corps of Engineers, St. Paul District, Regulatory Branch, at (651) 290–5381.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps proposes to amend the restricted area regulations at 33 CFR part 334 by adding § 334.815 to establish a restricted area in the Menominee River, at the Marinette Marine Corporation Shipyard, Marinette, Wisconsin, to provide adequate protection for the Littoral Combat Ship (LCS Freedom 1) during its construction. By correspondence dated July 27, 2006, Marinette Marine Corporation, on behalf of the Department of the Navy, requested that the Corps of Engineers establish this restricted area.

Procedural Requirements

a. Review Under Executive Order 12866

This proposed rule is issued with respect to a military function of the Department of Defense and the provisions of Executive Order 12866 do not apply.

b. Review Under the Regulatory Flexibility Act

This proposed rule has been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (i.e., small businesses and small governments). Unless information is obtained to the contrary during the public notice comment period, the Corps expects that this restricted area would have practically no economic impact on the public, and no anticipated navigational hazard or interference with existing waterway traffic. This proposed rule, if adopted, will have no significant economic impact on small entities.

c. Review Under the National Environmental Policy Act

Due to the administrative nature of this action and because the intended change will only impact waters a distance of 100 feet from Marinette Marine Corporation's pier (an area of approximately 2.81 acres), the Corps expects that this regulation, if adopted, will not have a significant impact to the quality of the human environment and, therefore, preparation of an environmental impact statement will not be required. An environmental assessment will be prepared after the public notice period is closed and all comments have been received and considered. It may be reviewed at the District office listed at the end of the **FOR FURTHER INFORMATION CONTACT**, above.

d. Unfunded Mandates Act

This proposed rule does not impose an enforceable duty among the private sector and, therefore, it is not a Federal private section mandate and it is not subject to the requirements of either Section 202 or Section 205 of the Unfunded Mandates Act. We have also found under Section 203 of the Act, that small governments will not be significantly and uniquely affected by this rulemaking.

List of Subjects in 33 CFR Part 334

Danger zones, Marine safety, Navigation (water), Restricted Areas, Waterways.

For the reasons stated in the preamble, the Corps proposes to amend 33 CFR part 334, as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for 33 CFR part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Add § 334.815 to read as follows:

§ 334.815 Menominee River, at the Marinette Marine Corporation Shipyard, Marinette, Wisconsin; naval restricted area.

(a) *The area.* The waters 100 feet from Marinette Marine Corporation's pier defined by a rectangular shaped area on the south side of the river beginning on shore at the eastern property line of Marinette Marine Corporation at latitude 45°5′58.8″ N., longitude 087°36′56.0″ W.; thence northerly to latitude 45°5′59.7″ N., longitude 087°36′55.6″ W.; thence westerly to latitude 45°6′3.2″ N., longitude 087°37′9.6″ W.; thence southerly to latitude 45°6′2.2″ N., longitude 087°37′10.0″ W.; thence easterly along the Marinette Marine Corporation pier to the point of origin. The restricted area will be marked by a lighted and signed floating boat barrier.

(b) *The regulation.* All persons, swimmers, vessels and other craft, except those vessels under the supervision or contract to local military or Naval authority, vessels of the United States Coast Guard, and local or state law enforcement vessels, are prohibited from entering the restricted area without permission from the Supervisor of Shipbuilding, USN Marinette or his authorized representative.

(c) *Enforcement.* The regulation in this section, promulgated by the United States Army Corps of Engineers, shall be enforced by the Supervisor of Shipbuilding, United States Navy and/or such agencies or persons as he/she may designate.

Dated: April 14, 2008.

Michael G. Ensch,

Chief, Operations, Directorate of Civil Works.

[FR Doc. E8–8525 Filed 4–18–08; 8:45 am]

BILLING CODE 3710–92–P

POSTAL SERVICE

39 CFR Part 111

Service Barcode Required for Priority Mail Open and Distribute Container Address Labels

AGENCY: Postal Service™.

ACTION: Proposed rule.

SUMMARY: In this proposed rule the Postal Service provides new mailing standards to require the use of a concatenated UCC/EAN Code 128 Service barcode with a unique Service Type Code ''55'' on all Priority Mail® Open and Distribute container address labels. A proposed rule was published in the **Federal Register** on May 24, 2007 (Volume 72, Number 100, pages 29100–29101), requiring the use of a concatenated UCC/EAN Code 128 Delivery Confirmation service barcode. Although no comments were received in response to the proposed rule, because of the modification we have decided to publish a second proposed rule to solicit any new comments.

DATES: Submit comments on or May 5, 2008.

ADDRESSES: Mail or deliver written comments to the Manager, Mailing Standards, Postal Service, 475 L'Enfant Plaza, SW., Room 3436, Washington, DC 20260–3436. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through

Friday, at the Postal Service Headquarters Library, 475 L'Enfant Plaza, SW., 11th Floor North, Washington, DC 20260–0004.

FOR FURTHER INFORMATION CONTACT: Cheryl DuBois at 202–268–3146 or Garry Rodriguez at 202–268–7281.

SUPPLEMENTARY INFORMATION:

Comments

There were no comments received on the May 24, 2007, proposed rule.

Background

Priority Mail Open and Distribute is designed to enhance the Postal Service's ability to provide mailers with expedited service to destination delivery units and other mail processing facilities. Mailers are currently provided an option to use Delivery Confirmation service to receive performance information and confirmation that their containers arrived at the destination facility, along with the date, ZIP Code™, and time their Priority Mail Open and Distribute containers are received at the destination facility.

Summary

In order to verify the arrival at the destination facility for all Priority Mail Open and Distribute containers, the Postal Service is requiring mailers to place a barcode on all Priority Mail Open and Distribute address labels. The barcode is required to be a concatenated UCC/EAN 128 Service barcode with a unique Service Type Code (STC) ''55''. The text, ''USPS SCAN ON ARRIVAL,'' above the barcode is exclusive to this service and will assist in facilitating correct scan behavior.

The decision to require the use of the Service barcode instead of the Delivery Confirmation barcode will lessen any confusion as to the appropriate scans the barcode should receive and ensure the customer gets the appropriate performance information. This will provide better visibility to the customer and enable the USPS® to monitor service performance based on the product. We invite public comment on this change to the proposed rule.

The requirement is in accordance with instructions for barcode specifications, electronic file format and testing, and certification process, in Publication 91, *Confirmation Services Technical Guide*. An update is available in the April 10, 2008, *Postal Bulletin*.

Implementation

The required use of a Service barcode with Priority Mail Open and Distribute service will be implemented May 12, 2008.

We invite public comments on the following proposed revisions to *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM®), incorporated by reference in the *Code of Federal Regulations*. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Accordingly, 39 CFR part 111 is proposed to be amended as follows:

PART 111—[AMENDED]

1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

2. Revise the following sections of *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM), as follows:

* * * * *

700 Special Standards

* * * * *

705 Advanced Preparation and Special Postage Payment Systems

* * * * *

16.0 Express Mail Open and Distribute and Priority Mail Open and Distribute

* * * * *

16.4 Additional Standards for Priority Mail Open and Distribute

* * * * *

16.4.2 Extra Services

[*Revise the first sentence in the introductory text of 16.4.2 as follows:*]

No extra services are available for Priority Mail Open and Distribute containers. * * *

* * * * *

16.5 Preparation

* * * * *

16.5.4 Tags 161 and 190—Priority Mail Open and Distribute

* * * * *

[*Delete item c.*]

* * * * *

16.5.6 Address Labels

[*Revise the text in 16.5.6 as follows:*]

In addition to Tag 157, Label 23, Tag 161, or Tag 190, USPS-supplied containers and envelopes and mailer-supplied containers used for Express Mail Open and Distribute or Priority Mail Open and Distribute must bear an address label that states ''OPEN AND DISTRIBUTE AT:'' followed by the facility name. Find the facility name and other information for addressing the labels, according to the type of facility, in 16.5.8 through 16.5.12.

* * * * *

[*Replace 16.5.7, Delivery Confirmation Service, with new 16.5.7, Address Label Barcode Requirement, as follows:*]

16.5.7 Address Label Service Barcode Requirement

An electronic Service barcode using the concatenated UCC/EAN Code 128 symbology must be incorporated in the address label. Mailers must prepare address labels using the formats in 16.5.8 through 16.5.12, including the service type code ''55'' to identify the service and the human-readable text ''USPS SCAN ON ARRIVAL'' above the barcode. USPS certification is required from the National Customer Support Center (NCSC) for each printer used to print barcoded open and distribute address labels, except for barcodes created using USPS Shipping Assistant. NCSC contact information, formatting specifications for barcodes and electronic files, and certification, are included in Publication 91, *Confirmation Services Technical Guide*. Mailers can use any of the following options available to create a label with a Service barcode for Priority Mail Open and Distribute address labels:

a. Select a service software developer from the list of companies that have met Postal Service specifications for the electronic file and barcode available at *http://www.usps.com/shipping/shipsystems.htm*.

b. Register and download the USPS Shipping Assistant desktop application available at *http://www.usps.com/shippingassistant/*.

c. Register and integrate the USPS Web Tools Application Program Interface (API) for Priority Mail Open and Distribute using your own developers, available at *http://www.usps.com/webtools/*.

d. Use Publication 91, *Confirmation Services Technical Guide*, for technical specifications and requirements.

16.5.8 DDU Address Labels

[*Revise the second sentence in 16.5.8 as follows:*]

* * * For the DDU address label, use the destination facility name, the street address, city, state, and ZIP+4 found in the Drop Entry Point View File available at USPS' FAST Web site: *https://fast.usps.com*. * * *

Exhibit 16.5.8 DDU Address Label

[*Revise Exhibit 16.5.8 to replace the Delivery Confirmation barcode and human-readable text above and below, with a Service barcode and human-readable text.*]

16.5.9 SCF Address Labels

[*Revise the first sentence in 16.5.9 as follows:*]

For the SCF address label, use SCF followed by the city, state, and ZIP Code found in the Drop Entry Point View File available at USPS' FAST Web site: *https://fast.usps.com.* * * *

Exhibit 16.5.9 SCF Address Label

[*Revise Exhibit 16.5.9 to replace the Delivery Confirmation barcode and human-readable text above and below, with a Service barcode and human-readable text.*]

16.5.10 ADC Address Labels

[*Revise the first sentence in 16.5.10 as follows:*]

For the ADC address label, use ADC followed by the city, state, and ZIP Code found in the Drop Entry Point View File available at USPS' FAST Web site: *https://fast.usps.com.* * * *

Exhibit 16.5.10 ADC Address Label

[*Revise Exhibit 16.5.10 to replace the Delivery Confirmation barcode and human-readable text above and below, with a Service barcode and human-readable text.*]

16.5.11 BMC Address Labels

[*Revise the first sentence in 16.5.11 as follows:*]

For the BMC address label, use BMC followed by the city, state, and ZIP Code found in the Drop Entry Point View File available at USPS' FAST Web site: *https://fast.usps.com.* * * *

Exhibit 16.5.11 BMC Address Label

[*Revise Exhibit 16.5.11 to replace the Delivery Confirmation barcode and human-readable text above and below, with a Service barcode and human-readable text.*]

[*Renumber 16.5.12, Markings on Enclosed Mail, as 16.5.13. Add new 16.5.12, ASF Address Labels, and Exhibit 16.5.12, ASF Address Label, as follows:*]

16.5.12 ASF Address Labels

For the ASF address label, use ASF followed by the city, state, and ZIP Code found in the Drop Entry Point View File under BMC available at USPS' FAST Web site: *https://fast.usps.com.* See Exhibit 16.5.12 for an example of an ASF address label.

Exhibit 16.5.12 ASF Address Label

[*Add new Exhibit 16.5.12, as follows:*]

* * * * *

We will publish an appropriate amendment to 39 CFR 111 to reflect these changes if the proposal is adopted.

Neva R. Watson,

Attorney, Legislative.

[FR Doc. E8–8228 Filed 4–18–08; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 761

[EPA–HQ–RCRA–2008–0123; FRL–8555–9]

RIN 2050–AG42

Polychlorinated Biphenyls: Manufacturing (Import) Exemption for Veolia ES Technical Solutions, LLC

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; Extension of comment period.

SUMMARY: The Environmental Protection Agency (EPA) is announcing that the comment period to the proposed rule entitled, Polychlorinated Biphenyls: Manufacturing (Import) Exemption for Veolia ES Technical Solutions, LLC published on March 6, 2008 (73 FR 12053) is being extended for 45 days until June 5, 2008. On November 14, 2006, Veolia ES Technical Solutions, LLC (Veolia) submitted a petition to EPA to import up to 20,000 tons of PCB waste from Mexico for disposal at Veolia's TSCA-approved facility in Port Arthur, Texas. EPA is soliciting comments on the proposed decision to grant Veolia's petition. In addition, EPA also received a request to hold an informal public hearing. The Agency grants such a request and will publish another notice in the **Federal Register** announcing the location and date of the hearing.

DATES: The comment period for this supplemental proposed rule is extended from the original closing date of April 21, 2008, to June 5, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–RCRA–2008–0123 by one of the following methods:

www.regulations.gov: Follow the on-line instructions for submitting comments.

E-mail: Comments may be sent by electronic mail (e-mail) to *RCRA-docket@epa.gov*, Attention Docket ID No. EPA–HQ–RCRA–2008–0123.

Fax: Fax comments to: 202–566–0270, Attention Docket ID No. EPA–HQ–RCRA 2008–0123.

Mail: Send comments to: OSWER Docket, EPA Docket Center, Mail Code 5305T, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington DC 20460, Attention Docket ID No. EPA–HQ–RCRA–2008–0123. Please include a total of two copies.

Hand delivery: Deliver comments to: Environmental Protection Agency, EPA Docket Center, Room 3334, 1301 Constitution Avenue, NW., Washington DC, Attention Docket ID No. EPA–HQ–RCRA–2008–0123. 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 Number EPA–HQ–RCRA–2008–0123. 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.

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, such as 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 OSWER Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OSWER Docket is (202) 566–0270.

FOR FURTHER INFORMATION CONTACT: For more detailed information on specific aspects of this rulemaking, contact William Noggle, Office of Solid Waste, Hazardous Waste Identification Division, MC 5304P, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington DC 20460, (703–347–8769) (*noggle.william@epa.gov*).

SUPPLEMENTARY INFORMATION: We are extending the comment period by 45 days in response to a request from the public. In addition, EPA received a request to hold an informal public hearing. The Agency will publish another notice announcing the location and date of the hearing. As required by 40 CFR 750.18(a), the hearing will begin no sooner than seven (7) days after the close of the comment period.

List of Subjects in 40 CFR Part 761

Environmental protection, Hazardous substances, Labeling, Polychlorinated biphenyls, Reporting and recordkeeping requirements.

Dated: April 15, 2008.

Susan Parker Bodine,

Assistant Administrator for Solid Waste and Emergency Response.

[FR Doc. E8–8560 Filed 4–18–08; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Parts 5 and 51c

RIN 0906–AA44

Designation of Medically Underserved Populations and Health Professional Shortage Areas

AGENCY: Department of Health and Human Services (HHS).

ACTION: Notice of proposed rulemaking; extension of public comment period and clarification.

SUMMARY: On February 29, 2008, HHS published a notice of proposed rulemaking, ''Designation of Medically Underserved Populations and Health Professional Shortage Areas'' (73 FR 11232), to revise and consolidate the criteria and processes for designating medically underserved populations (MUPs) and health professional shortage areas (HPSAs). HHS provided a 60-day public comment period, with written comments to be received on or before April 29, 2008. HHS and the Health Resources and Services Administration (HRSA) have received requests for an extension of the comment period. In consideration of these requests, HHS is extending the comment period an additional 30 days, with a new closing date of May 29, 2008.

DATES: Written comments on the proposed rule must be submitted on or before May 29, 2008. Please refer to **SUPPLEMENTARY INFORMATION** for additional information.

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

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

2. *By Regular Mail.* You may mail written comments (one original and two copies) to the following address only: Health Resources and Services Administration, Department of Health and Human Services, *Attention:* Ms. Andy Jordan, 8C–26 Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

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

3. *By Express or Overnight Mail.* You may send written comments (one original and two copies) to the following address only: Health Resources and Services Administration, Department of Health and Human Services, *Attention:* Ms. Andy Jordan, 8C–26 Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

4. *By Hand or Courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period (May 29, 2008) to one of the following addresses. If you intend to deliver your comments to the Rockville address, please call telephone number (301) 594–0816 in advance to schedule your arrival with one of our staff members at these addresses: Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; or 8C–26 Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. (Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the HRSA drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

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

FOR FURTHER INFORMATION CONTACT: Andy Jordan, (301) 594–0197.

SUPPLEMENTARY INFORMATION: HRSA is concerned that the publication of the proposed HPSA/MUP regulation has created misapprehension among some health center grantees regarding their ability to meet the proposed HPSA/MUP designation criteria, and in particular, their eligibility for current or expanded health center funding opportunities. The proposed rule includes three methods for making designations. As proposed, none of the three methods would limit health center eligibility for current, new or expanded funding.

Currently, all of the designations are made on data that are submitted by States or communities. Under the proposed rule, this submission burden would be reduced by HRSA's use of nationally available data for initial calculations. In addition, States or communities continue to have the option to submit more specific or current local data as an alternative for use in calculations. This option may be particularly important to accurately reflect local demographic and health service realities. For example, an urban area may include a subpopulation with high needs, or a rural area may have recently experienced an acute loss of primary care providers.

In addition to the Tier 1 method, the proposed rule includes two new designation methods. The first new method (Tier 2) assures that areas/organizations are not disadvantaged by the presence of federally-supported resources. The second new method (Safety Net Facility) allows those organizations that serve high need populations to maintain or pursue designation. If none of the above methods produces a designation, this proposed rule continues the possibility of designation at the request of the Governor pursuant to existing law (section 330(b)(3)(D), Public Health Service Act).

To reassess the impact of the proposed regulation on health centers, HRSA analyzed the most recent data from health center grantees who reported in calendar year 2006 to the Uniform Data System (UDS) and HRSA applied the methodologies in the proposed rule using nationally available data. Based on this analysis, at most, only 16 out of 1,001 health center grantees (1.6 percent) would have to include State or local data to seek to maintain their current designation status. This analysis was conducted at the grantee level consistent with HRSA's health center policy that states: ''The statutory obligations of serving an MUA or MUP is an organizational level obligation, not a site specific requirement.'' (*http://answers.hrsa.gov/*, Answer ID 1216). The proposed rule does not change this health center policy.

In order to facilitate a better understanding of the proposed rule, HRSA provided State Primary Care Offices (PCO) with a calculator that applies the formulas proposed in the rule to determine designation, with data files, as well as with technical assistance in using the calculator. We encourage interested parties to contact and work with their PCOs (*http://nhsc.bhpr.hrsa.gov/resources/info/pco.asp*) to review data and understand the implications of the proposed rule.

To allay concerns of some commenters, this notice seeks to draw attention to and elicit comments on the following matters:

Eligibility for Federal Resources

In the preamble, a statement in section IV. B. Methodology (last paragraph before subsection C at 73 FR 11247) inaccurately reflects our intent and the potential effect regarding eligibility for organizations designated through Tier 1 or Tier 2. It suggests that Tier 2 designations will not be eligible for additional Federal resources. That is not the case. No provision in the proposed rule imposes any such limitation and it is not our intent to do so. Under the proposed rule, whether designated via Tier 1, Tier 2, or Safety Net Facility all entities will be equally eligible to compete for new or expanded health center funding. Similarly, all entities designated through Tier 1, Tier 2, or Safety Net Facility will be equally eligible to compete for National Health Service Corps (NHSC) placements. In contrast to the health center policy described above, NHSC placements are site specific pursuant to section 333(a) of the Public Health Service Act. For example, while a health center grantee may be eligible for health center funding for all of its sites, only some of its sites may be eligible under law for NHSC placements. For further information on NHSC placements, please contact your State PCO.

Scoring for Relative Need

Scores are a numerical expression of relative need derived from available data about demography, economics, population density, health status and available primary care providers. Scores are designed to be used by the NHSC for provider placement and may be used by other programs. While the proposed rule does not include a specific methodology for scoring those organizations that receive a designation for serving high-need populations (Safety Net Facility), a scoring methodology will have to be established. To determine a Safety Net Facility designation, HRSA will need data on the proportions of the applicant organization's patient population that are low-income uninsured as well as Medicaid-eligible (see 73 FR 11251 of the proposed rule). We seek comments on how to score these Safety Net Facility designations so that their need is ranked equitably with the designations scored in the other methods outlined in the proposed rule, that is, Tier 1 and Tier 2.

We invite comments on these issues, as well as any other provisions of the proposed rule. We will respond to all comments when we publish the final rule.

Dated: April 17, 2008.

Elizabeth M. Duke,

Administrator, Health Resources and Services Administration.

[FR Doc. 08–1167 Filed 4–17–08; 11:32 am]

BILLING CODE 4152–01–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Chapter 2

Nontraditional Defense Contractor

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Request for public input.

SUMMARY: DoD is interested in creating new and/or expanding existing pathways for nontraditional contractor participation in defense procurements. In order to gauge the Department's success with respect to this endeavor, DoD is specifically interested in first establishing a standard Department-wide definition for ''nontraditional defense contractor'' that would be applied in defense procurements conducted pursuant to the Federal Acquisition Regulation (FAR) and the Defense FAR Supplement (DFARS). In support of this initiative, DoD is seeking industry input with regard to the standards that should be utilized in defining what constitutes a nontraditional defense contractor and in developing an appropriate definition for use on a permanent basis.

DATES: Submit written comments to the address shown below on or before June 20, 2008.

ADDRESSES: Submit comments to: Office of the Director, Defense Procurement and Acquisition Policy, ATTN: OUSD (AT&L) DPAP (CPIC), 3060 Defense Pentagon, Washington, DC 20301–3060. Comments also may be submitted by e-mail to *Anthony.Cicala@osd.mil.*

FOR FURTHER INFORMATION CONTACT: Mr. Anthony E. Cicala, by telephone at 703–693–7062, or by e-mail at *Anthony.Cicala@osd.mil.*

SUPPLEMENTARY INFORMATION: Since the 1970s, DoD has encouraged its acquisition team to leverage, to the maximum extent possible, the commercial marketplace to acquire the Department's products and services. In response to special commissions, panels, and legislation, in January 2001, DoD required the development of implementation plans with the goal of increasing the acquisition of commercial items using the procedures at FAR Part 12, Acquisition of Commercial Items. In addition, legislative changes to FAR Part 12, and FAR Part 13—Simplified Acquisition Procedures, were enacted in an attempt to streamline the process and create a more commercial-like contracting environment. DoD expected increased use of the flexibility afforded by FAR Part 12 and FAR Part 13 procedures to provide DoD greater access to the commercial markets (products and services types) which would lead to increased competition, better prices, and access to new market entrants and/or technologies. DoD is interested in determining how successful it has been, and is now examining ways to collect information on the number of nontraditional defense contractors the Department reaches through its acquisitions to evaluate the extent of increased access to commercial markets, potential cost savings, increased quality, and/or technological innovation.

Currently, a definition for nontraditional defense contractor is promulgated at DFARS Subpart 212.70, but the application of that definition is limited to follow-on efforts to Other

Transaction (OT) for Prototype awards made by DoD pursuant to the authority of 10 U.S.C. 2371 and Section 845 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160), as amended. Given that this definition tends to be narrow in scope in that it has its genesis in Research and Development (R&D) projects that involve experimentation, test, demonstration, and developments related to weapons systems, the application of the current definition may not be entirely appropriate with respect to the various types of defense procurements that are possible under existing regulations.

With respect to this request for information from interested parties, consideration should include, but is not necessarily limited to, the following:

○ Should consideration be given to the percentage of a company's business that is devoted to defense specific award actions versus non-defense specific award actions in determining its status as a traditional vice nontraditional defense contractor? (*e.g.*, If a company's sales revenue is based on 90 percent commercial sector versus 10 percent defense sector, should that be taken into consideration? Are there other benchmarks that should be used in classifying a contractor as a nontraditional defense contractor and, if so, what are they and why are they appropriate?)

○ Should the definition stay the same for all of the various types of acquisitions, or should the definition change depending upon products or services acquired? (*e.g.*, Service, Supply, Construction, R&D)

○ Should contractors be required to self-certify their status as a nontraditional defense contractor via registration in the Central Contractor Registration (CCR) database, Online Representations and Certifications Application (ORCA), or some other self-certification mechanism, based on an established definition for nontraditional defense contractor, so that individual contracting officers are not required to make these independent judgment calls for every single contract action contemplated? If not, how should DoD otherwise capture nontraditional defense contractor status?

DoD requests your considered input for all other aspects of what constitutes a nontraditional defense contractor in DoD procurements.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

[FR Doc. E8–8484 Filed 4–18–08; 8:45 am]

BILLING CODE 5001–08–P

Notices

Federal Register
Vol. 73, No. 77
Monday, April 21, 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

Agricultural Marketing Service

[Docket No. AMS–ST–08–0028]

Plant Variety Protection Board; Open Teleconference Meeting

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of teleconference meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming teleconference meeting of the Plant Variety Protection Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the meeting.

DATES: May 1, 2008; 1 p.m.–3 p.m. Eastern Daylight Time.

ADDRESSES: The meeting will be held in the United States Department of Agriculture, Agricultural Marketing Service Conference Room, Room 3074, South Building, 1400 Independence Avenue, SW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Janice M. Strachan, Plant Variety Protection Office (PVPO), Science and Technology Programs, Agricultural Marketing Service, United States Department of Agriculture, telephone number (301) 504–5518, fax (301) 504–5291, or e-mail *PVPOmail@usda.gov.*

SUPPLEMENTARY INFORMATION: The Plant Variety Protection (PVP) Board is authorized under section 7 of the Plant Variety Protection Act (7 U. S. C. 2327). The Board advises the Secretary of Agriculture on rules and regulations implementing the Act. On May 1, 2008, the Board will conduct a teleconference meeting to discuss improving the Plant Variety Protection Office Application Process and other related topics.

The tentative agenda for the teleconference meeting includes: (1) Welcome and opening remarks; (2) Action on general recommendations from Board minutes of November 14 and 15, 2007 meeting; (3) Financial status of the PVP Office, (4) PVP Office information technology infrastructure, and (5) Adjournment.

The public may attend the teleconference at the following address: USDA's Agricultural Marketing Service Conference Room, Room 3074, South Building, 1400 Independence Avenue, SW., Washington, DC 20250. All attendees are required to register with the PVP Office at 301–504–5518 before April 30, 2008. Identification will be required to be admitted to the USDA's South Building.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation should be directed to the person listed under **FOR FURTHER INFORMATION CONTACT**. Minutes of the teleconference will be posted on the Internet Web site *http://www.ams.usda.gov/PVPO.*

Dated: April 16, 2008.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E8–8553 Filed 4–18–08; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

United States National Arboretum (USNA); Notice of Intent To Renew Information Collection

AGENCY: Agricultural Research Service; USDA.

ACTION: Notice and request for comment.

SUMMARY: The Department of Agriculture (USDA) seeks comments on the intent of the USNA to renew an information collection that expires September 30, 2008. The information collection serves as a means to collect for certain uses of the facilities, grounds, and services. This includes fees for use of the grounds and facilities, as well as for commercial photography and cinematography. Fees generated will be used to defray USNA expenses or to promote the missions of the USNA.

DATES: Comments must be submitted on or before June 25, 2008.

ADDRESSES: You may submit comments, identified by [docket number and/or RIN Number _____] by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments. *E-mail: tom.elias@ars.usda.gov.* Include [docket number and/or RIN Number_____] in the subject line of text. Fax: 202–245–4514.

Mail: Director, U.S. National Arboretum, Beltsville Area, Agricultural Research Service, 3501 New York Avenue, NE., Washington, DC 20002.

Hand Delivery/Courier: Director, U.S. National Arboretum, Beltsville Area, Agricultural Research Service, 3501 New York Avenue, NE., Washington, DC 20002.

SUPPLEMENTARY INFORMATION:

Title: Intent to Renew Information Collection.

OMB Number: 0518–0024, expiration date of approval, September 30, 2008.

Type of Request: To extend an approved information collection.

Abstract: The mission of the U.S. National Arboretum (USNA) is to serve the public need for scientific research, education, and gardens that conserve and showcase plants to enhance the environment. The USNA is a 446-acre facility, open to the general public for purposes of education and passive recreation. The USNA is a national center for public education that welcomes visitors in a stimulating and aesthetically pleasing environment. The USNA receives approximately 500,000 visitors on the grounds each year. Many garden clubs and societies utilize the USNA grounds to showcase their activities. The USNA is a national center for public education that welcomes visitors in a stimulating and aesthetically pleasing environment.

Section 890(b) of the Federal Agriculture Improvement and Reform Act of 1996, Public Law 104–127 (1996 Act), expanded the authorities of the Secretary of Agriculture to charge reasonable fees for the use of USNA facilities and grounds. These authorities included the ability to charge fees for temporary use by individuals or groups of USNA facilities and grounds in furtherance of the mission of the USNA. Also, authority was provided to charge fees for tram tours and for the use of the USNA for commercial photography and cinematography. All rules and regulations noted in 7 CFR 500, subpart 2A, conducted on the USNA property,

will apply to individuals or groups granted approval to use the facilities and grounds. In order to administer the use of the USNA facilities and to determine if the requested use is consistent with the mission of the USNA, it is necessary for the USNA to obtain information from the requestor. Each request will require the completion of an application and submission of an application fee. The application is simple and requires only information readily available to the requestor. The requestor is asked to indicate by whom and for what purpose the USNA facilities are to be used. Applications are available in hard copy format as well as electronic format on the USNA Web site (*http://www.usna.usda.gov*). Completed permit requests are received in person, by mail, and by facsimile.

Paperwork Reduction Act: In accordance with the Office of Management and Budget (OMB) regulations (5 CFR part 1320) implementing the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements that will be imposed will be submitted to OMB for approval. These requirements will not become effective prior to OMB approval.

Estimate of Burden:

Estimated Number of Responses: The USNA estimates 420 requests for the use of facilities and 25 for photography and cinematography on an annual basis.

Estimated Burden per Responses: The estimated completion time for the application is less than 15 minutes.

Estimate of Total Annual Burden on Respondents: The total cost for responding is $2,507 for 109 hours of time at $23 per hour.

Obtaining Permit Requests: In addition to the current process of obtaining the permit requests in person, by mail, and by facsimile (and receiving them back in a like manner), the application for photography and cinematography is available on the USNA Web site (*http://www.usna.usda.gov/Information/facilitiesuse/photographyapp.pdf).* The application for the use of facilities will be available on the Web site by the end of the calendar year. Completed permit requests can be submitted to the Administrative Group, USDA, ARS, U.S. National Arboretum, 3501 New York Avenue, NE., Washington, DC 20002.

Comments: Comments are invited on whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; 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; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of collection on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technology.

Done at Washington, DC, this 14th day of April, 2008.

Edward B. Knipling,

Administrator, Agricultural Research Service.

[FR Doc. E8–8552 Filed 4–18–08; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2008–0012]

Codex Alimentarius Commission: Meeting of the Codex Committee on Fresh Fruits and Vegetables

AGENCY: Office of the Under Secretary for Food Safety, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, U.S. Department of Agriculture (USDA) and the Agricultural Marketing Service (AMS), USDA, are sponsoring a public meeting on April 25, 2008. The objective of the public meeting is to provide information and receive public comments on agenda items and draft United States positions that will be discussed at the 14th Session of the Codex Committee on Fresh Fruits and Vegetables (CCFFV) of the Codex Alimentarius Commission (Codex), which will be held in Mexico City, Mexico, from May 12–17, 2008. The Under Secretary for Food Safety and AMS recognize the importance of providing interested parties the opportunity to obtain background information on the 14th Session of the CCFFV and to address items on the agenda.

DATES: The public meeting is scheduled for Friday, April 25, 2008, at 10 a.m.

ADDRESSES: The public meeting will be held in Room 2068, USDA South Building, at 1400 Independence Ave., SW., Washington, DC 20250. Documents related to the 14th Session of the CCFFV will be accessible via the World Wide Web at the following address: *http://www.codexalimentarius.net/current.asp*.

The U.S. Delegate to the 14th Session of the CCFFV, Mr. Dorian LaFond, AMS, invites interested U.S. parties to submit their comments electronically to the following e-mail address: *dorian.lafond@usda.gov*.

Registration: You may register electronically to *dorian.lafond@usda.gov*. Early registration is encouraged because it will expedite entry into the building. Because the meeting will be held in a Federal building, you should also bring photo identification and plan for adequate time to pass through security screening systems.

For Further Information About the 14th CCFFV Session Contact: Mr. Dorian LaFond, International Standards Coordinator, AMS, Fruit and Vegetable Programs, Stop 0235, 1400 Independence Ave, SW., Washington, DC 20250, Phone: (202) 690–4944, e-mail: *dorian.lafond@usda.gov*.

For Further Information About the Public Meeting Contact: Syed Ali, Staff Officer, U.S. Codex Office, Food Safety and Inspection Service (FSIS), Room 4861, South Building, 1400 Independence Avenue, SW., Washington, DC 20250, Phone: (202) 720–0574, Fax: (202) 720–3157, e-mail: *syed.ali@fsis.usda.gov*.

SUPPLEMENTARY INFORMATION:

Background

The Codex Alimentarius Commission (Codex) was established in 1963 by two United Nations organizations, the Food and Agriculture Organization and the World Health Organization. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to protect the health of consumers and ensure that fair practices are used in trade. The CCFFV elaborates world wide standards and codes of practice for fresh fruits and vegetables. The CCFFV is hosted by Mexico.

Issues To Be Discussed at the Public Meeting

The following items on the agenda for the 14th CCFFV Session will be discussed during the public meeting:

- Matters referred to the CCFFV from the Codex Alimentarius Commission and other Codex bodies.
- Matters arising from other international organizations on the Standardization of Fresh Fruits and Vegetables.
- Proposed Layout for Codex Standards for Fresh Fruits and Vegetables.
- Draft Codex Standard for Tomatoes.

• Draft Sections 3—Provisions Concerning Sizing (Draft Standard for Tomatoes).
• Draft Codex Standard for Bitter Cassava.
• Draft Codex Guidelines for the Inspection and Certification of Fresh Fruits and Vegetables for Conformity to Quality Standards.
• Proposed Draft Codex Standard for Apples.
• Proposals for Amendments to the Priority List for the Standardization of Fresh Fruits and Vegetables.

Each issue listed will be fully described in documents distributed, or to be distributed, by the Secretariat prior to the meeting. Members of the public may access or request copies of these documents via the World Wide Web at the following address: *http://www.codexalimentarius.net/current.asp*.

Public Meeting

At the April 25, 2008, public meeting, draft U.S. positions on the agenda items will be described and discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be sent electronically to the U.S. Delegate for the 14th CCFFV Session, Dorian LaFond, at *dorian.lafond@usda.gov*. Written comments should state that they relate to activities of the 14th CCFFV Session.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it online through the FSIS Web page located at (*http://www.fsis.usda.gov/regulations/2008_Notices_Index/*. FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page. Through the Listserv and Web page, FSIS is able to provide information to a much broader and more diverse audience. In addition, FSIS offers an e-mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/news_and_events/email_subscription/*. Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves, and they have the option to password protect their accounts.

Done at Washington, DC, on: April 15, 2008.

Paulo M. Almeida,

Acting U.S. Manager for Codex Alimentarius.

[FR Doc. E8–8473 Filed 4–18–08; 8:45 am]
BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Funds Availability Section 538 Multi-Family Housing Guaranteed Rural Rental Housing Program (GRRHP)—Demonstration Program for Fiscal Year 2008

AGENCY: Rural Housing Service, USDA.

ACTION: Notice.

SUMMARY: Through this Notice of Funds Availability (NOFA), in conjunction with the GRRHP 2007 Notice, published February 26, 2007, Volume 72 FR, 8339–8346 and the GRRHP 2008 Notice, published February 4, 2008, Volume 73 FR, 6469–6477, the Agency announces the implementation of a demonstration program under the section 538 Guaranteed Rural Rental Housing Program (GRRHP) pursuant to 7 CFR 3565.4 for Fiscal Year (FY) 2008 and 7 CFR 3565.17 demonstration programs. The Demonstration Program's purpose is to test the viability and efficacy of the concept of a continuous loan note guarantee through the construction and permanent loan financing phases of a project. Those applications that meet the Demonstration Program's qualifying criteria and are selected to participate will be offered one loan note guarantee upon closing of the construction loan that will be in effect throughout both of the project's construction and permanent phases without interruption.

The funding for the Demonstration Program will be approximately 10 percent of the FY 2008 appropriation. Expenses incurred in developing applications will be at the applicant's risk. The following paragraphs outline the timeframes, eligibility requirements, lender responsibilities, and the overall response and application processes.

Eligible Lenders wishing to have their FY 2008 obligations considered for the Demonstration Program must send a signed request on its letterhead with the proposed project details as outlined in the ''Demonstration Program Response Submission Address'' section of this Notice.

Demonstration Program Guidelines

The following guidelines are being provided to facilitate a structured implementation of the program:

1. Demonstration guarantee. The Demonstration guarantee is a guarantee that will be offered to lenders who submit applications in response to the 2008 Demonstration Notice's demonstration program's qualifying criteria. The Demonstration guarantee will consist of one loan note guarantee that will be issued upon closing of the construction loan and will be in effect throughout both of the project's construction and permanent financing phases without interruption.

2. Upon approval of an application from an approved lender, the Agency will commit to providing a demonstration guarantee for the construction and permanent financing phases of the project, subject to the availability of funds.

3. Guarantee percentage and payment. Both construction loan advances and permanent loans are eligible for a guarantee subject to the following limitations:

Construction loan advances and permanent loans. The Agency may guarantee a construction contract which has credit enhancements to protect the Government's interest. The Agency can guarantee the ''construction and permanent'' financing phases of a project. The Agency cannot, however, guarantee only the ''construction'' financing phase of a project. Guarantees under the demonstration guarantee will cover construction loan advances and the subsequent permanent loan. The maximum guarantee of construction advances will not at any time exceed the lesser of 90 percent of the amount of principal and interest up to default advanced for eligible uses of loan proceeds or 90 percent of the original principal amount and interest up to default of a loan. Penalties incurred as a result of default are not covered by the guarantee. The Agency may provide a lesser guarantee based upon its evaluation of the credit quality of the loan.

4. A lender making a construction loan must demonstrate an ability to originate and service construction loans.

5. Guarantee during construction. The Agency will issue a demonstration guarantee only to an approved lender.

6. Demonstration guarantee program compliance requirement. For a demonstration guarantee, the following items will have to be submitted in order to remain compliant with program

requirements. The items must be submitted within the timeframe stipulated by the Agency and must also be approved by the AGENCY:

(i) A certificate of substantial completion;

(ii) A certificate of occupancy or similar evidence of local approval;

(iii) A final cost certification in a form acceptable to the Agency;

(iv) A complete copy of the permanent loan closing docket; and

(v) Necessary information to complete an updated necessary assistance review by the Agency.

The Agency may declare the loan in default if the Lender fails to comply with the demonstration guarantee program guidelines and program compliance requirements. The Agency may also declare the loan in default if the Agency's final inspection is not satisfactory. To facilitate the implementation of the program, certain program forms may be addended to include relevant Demonstration Program requirements.

The selected applicants will be subject to the Demonstration Program guidelines in this Notice, and GRRHP's controlling statute, regulations, and handbook as amended. The GRRHP operates under the Housing Act of 1949 and regulations at 7 CFR part 3565. The GRRHP Origination and Servicing Handbook (HB–1–3565) is available to provide lenders and the general public with guidance on program administration. HB–1–3565, which contains a copy of 7 CFR part 3565 in Appendix 1, can be found at the Rural Development Instructions Web site address *http://www.rurdev.usda.gov/regs/hblist.html#hbw6.*

Demonstration Program Eligibility: Applications obligated in FY 2008 that meet the following criteria will be eligible for consideration to be selected into the Demonstration Program:

1. The project must have been awarded tax credits.

2. The project must have a loan to cost (LTC) ratio equal to or lower than 50%.

3. The Lender must have submitted a timely response to this Notice in accordance with the ''Demonstration Program Response Submission Address'' section of this Notice.

4. A Lender must have submitted its application under the GRRHP's 2007 Notice published February 26, 2007, Volume 72 FR 8339–8346 or 2008 Notice published on February 4, 2008, Volume 73 FR 6469–6477.

5. The application to be considered must have been obligated from October 1, 2007 to September 30, 2008. However, if Demonstration funds have not been fully utilized, the Agency may consider applications obligated on or after October 1, 2006.

6. The Lender must not have closed the construction loan prior to its selection to participate in the Demonstration Program.

Demonstration Program Selection Process

Selections from qualified applications that have requested consideration will be based on interest credit scores, with the highest scoring applications, being selected first, until all available demonstration funds are allocated. In the event of a tie, priority will be given to the project that: Is in the smaller rural community, and in case of a subsequent tie has the lowest LTC ratio.

The first round of selections into the Demonstration Program will be made on April 25, 2008, from the qualified pool of applications obligated between October 1, 2007 to April 4, 2008. In the event there are not enough qualified requests for selection into the Demonstration Program to utilize all the available Demonstration Program set-aside funds of approximately $13 million, then the selection process for any remaining funds will be conducted again on July 11, 2008 and will include all applications obligated from October 1, 2007 to July 3, 2008. If needed, an additional selection process will be conducted again on September 29, 2008 and will include all applications obligated from October 1, 2007 to September 22, 2008. Additionally, on September 29, 2008 if funds remain available, applications obligated on or after October 1, 2006 will be included in the selection process. All applicants will be notified of the selection results no later than 15 business days from the date of selection.

Demonstration Program Response Submission Address

Eligible lenders wishing to have their obligated applications considered for selection into the Demonstration Program must submit a signed request (not to exceed one page) on its letterhead that includes the following information:

1. Developer's Name.

2. Borrower's Name.

3. Project's Name.

4. Project's Address (City and State).

5. Project Type (Family, Senior, or Mixed).

6. Project's Total Units.

7. Project's Total Development Cost (TDC).

8. Amount of 538 Loan Guarantee.

9. Amount of Tax Credits Awarded.

10. Amount and Source of Other Financing.

11. Loan to Cost (LTC) %.

12. Area Population.

13. Date obligated or date of Conditional Commitment.

Send the Demonstration Program Response Submission Letter with all of the information listed above, along with a copy of the State Office's ''Proceed with Application/NOFA Response Selection'' letter and a copy of the tax credit award notification to: C.B. Alonso, Senior Loan Specialist, Multi-Family Housing Processing Division, Guaranteed Rural Rental Housing Program, USDA Rural Development, South Agriculture Building, Room 1271, STOP 0781, 1400 Independence Avenue, SW., Washington, DC 20250–0781.

Requests may also be faxed to 202–205–5066 or sent by e-mail (signed PDF copies of the above submissions) to *cb.alonso@wdc.usda.gov*. Eligible lenders mailing a request must provide sufficient time to permit delivery to the *Submission Address*. To be considered for the first selection process, requests must be received on or before April 25, 2008. To be considered for the second selection process, requests must be received on or before July 11, 2008. To be considered for the third selection process, requests must be received on or before September 29, 2008. Acceptance by a U.S. Post Office or private mailer does not constitute delivery. Postage due responses and applications will not be accepted.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, the information collection requirements contained in this Notice is approved by the Office of Management and Budget (OMB) under OMB Control Number 0575–0174.

Nondiscrimination Statement

''The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, sex, religion, age, disability, political beliefs, sexual orientation, marital status or family status (not all prohibited basis apply to all programs). Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact the USDA's Target Center at (202) 720–2600 (voice or TDD). To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326–W, Whitten Building, 1400 Independence Avenue, SW., Washington, DC 20250–9410, or call toll free, (866) 632–9992 (Voice). TDD users can contact USDA through local relay (800) 720–6382 (TDD) or (866) 377–8642 (relay voice users). USDA is an equal opportunity provider and employer.''

Dated: April 11, 2008.

Russell T. Davis,

Administrator, Rural Housing Service.

[FR Doc. E8–8470 Filed 4–18–08; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Pacific Islands Region Permit Family of Forms.

Form Number(s): None.

OMB Approval Number: 0648–0490.

Type of Request: Regular submission.

Burden Hours: 192.

Number of Respondents: 276.

Average Hours per Response: Shallow-set certificate requests, 10 minutes; Northwest Hawaiian Islands Bottomfish permit applications, 1 hour; American Samoa Longline permit applications, 45 minutes; all other applications, half an hour; appeals, 2 hours.

Needs and Uses: Fishermen in Federally-managed fisheries in the western Pacific region are required to maintain valid fishing permits on-board their vessels at all times. The permits are generally renewed annually and are needed to identify participants in the fisheries. Permits also are important to help measure impacts of management controls on the participants in the fisheries of the U.S. exclusive economic zone (EEZ) in the western Pacific.

Affected Public: Business or other for-profit organizations.

Frequency: Annually, every three years, and on occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Fax number (202) 395–7285, or *David_Rostker@omb.eop.gov*.

Dated: April 15, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–8411 Filed 4–18–08; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Foreign Fishing Vessel Permit Applications.

Form Number(s): None.

OMB Approval Number: 0648–0089.

Type of Request: Regular submission.

Burden Hours: 8.

Number of Respondents: 7.

Average Hours Per Response: Transshipment permit applications, 45 minutes; joint venture permit applications, 2 hours; directed fishing permit applications, 1.5 hours.

Needs and Uses: Section 204 of the Magnuson-Stevens Fishery Conservation and Management Act provides for the issuance of fishing permits to foreign vessels. The information contained in the applications is needed by NOAA to evaluate and determine eligibility of applications for permits.

Affected Public: Business or other for-profit organizations.

Frequency: Annually.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, fax number (202) 395–7285, or *David_Rostker@omb.eop.gov*.

Dated: April 15, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–8412 Filed 4–18–08; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Census Bureau

Proposed Information Collection; Comment Request; Survey of Building and Zoning Permit Systems

AGENCY: U.S. Census Bureau.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: To ensure consideration, written comments must be submitted on or before June 20, 2008.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Erica Filipek, U.S. Census Bureau, MCD, CENHQ Room 7K181, 4600 Silver Hill Road, Washington, DC 20233, telephone (301) 763–5161 (or via the Internet at *Erica.Mary.Filipek@census.gov*).

SUPPLEMENTARY INFORMATION

I. Abstract

The Census Bureau plans to request a three-year extension of the currently approved collection of the Form C–411, Survey of Building and Zoning Permit Systems. The Census Bureau produces statistics used to monitor activity in the large and dynamic construction industry. These statistics help state and local governments and the Federal Government, as well as private industry, to analyze this important sector of the economy. The accuracy of the Census Bureau statistics regarding the amount of construction authorized depends on data supplied by building and zoning officials throughout the country.

The Census Bureau uses the Survey of Building and Zoning Permit Systems to obtain information from state and local building permit officials needed for updating the universe of permit-issuing places. The questions pertain to the legal requirements for issuing building or zoning permits in the local jurisdictions. Information is obtained on such items as geographic coverage and types of construction for which permits are issued.

The universe of permit-issuing places is the sampling frame for the Building Permits Survey (BPS) and the Survey of Construction (SOC). These two sample surveys provide widely used measures of construction activity, including the economic indicators Housing Units Authorized by Building Permits and Housing Starts.

II. Method of Collection

The form is sent to a jurisdiction when the Census Bureau has reason to believe that a new permit system has been established or an existing one has changed, based on information from a variety of sources including survey respondents, regional councils and the Census Bureau's Geography Division which keeps abreast of changes in corporate status.

III. Data

OMB Number: 0607–0350.
Form Number: C–411.
Type of Review: Regular submission.
Affected Public: State or local government.
Estimated Number of Respondents: 2,000.
Estimated Time Per Response: 15 minutes.
Estimated Total Annual Burden Hours: 500.
Estimated Total Annual Cost: $0.
Respondent's Obligation: Voluntary.
Legal Authority: Title 13, United States Code, section 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 15, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–8425 Filed 4–18–08; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

Proposed Information Collection; Comment Request; Current Industrial Reports Surveys (Mandatory and Voluntary Surveys)

AGENCY: U.S. Census Bureau.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: To ensure consideration, written comments must be submitted on or before June 20, 2008.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Mendel D. Gayle, Census Bureau, 4600 Silver Hill Rd. Rm. 7K055, Washington, DC 20233, (301) 763–4587 or via the Internet at *mendel.d.gayle@census.gov*.

SUPPLEMENTARY INFORMATION

I. Abstract

The Census Bureau plans to request a revision of the currently approved Office of Management and Budget (OMB) clearance of the Current Industrial Reports (CIR) Program. The Census Bureau conducts a series of monthly, quarterly, and annual surveys as part of the Current Industrial Reports (CIR) program. The CIR surveys deal mainly with the quantity and value of shipments of particular products and occasionally with data on production and inventories; unfilled orders, receipts, stocks and consumption; and comparative data on domestic production, exports, and imports of the products they cover. These surveys provide continuing and timely national statistical data on manufacturing. Individual firms, trade associations, and market analysts use the results of these surveys extensively in planning or recommending marketing and legislative strategies.

The CIR program includes both mandatory and voluntary surveys. Typically, the monthly and quarterly surveys are conducted on a voluntary basis and annual collections are mandatory. The collection frequency of individual CIR surveys is determined by the cyclical nature of production, the need for frequent trade monitoring, or the use of data in Government economic indicator series. Some monthly and quarterly CIR surveys have an annual ''counterpart'' collection. The annual counterpart collects annual data on a mandatory basis from those firms not participating in the more frequent collection.

Previously, the CIR surveys were divided among three separate waves and submitted separately for OMB review. Due to the reduced number of surveys in the CIR program, the CIR surveys are being combined into one wave. The surveys included are:

Mandatory surveys	Voluntary surveys
MA311D—Confectionery	*M336G—Civil Aircraft and Aircraft Engines
MA325F—Paint and Allied Products	*M327G—Glass Containers
MA327C—Refractories	*MQ325B—Fertilizer Materials
MA331B—Steel Mill Products	*MQ327D—Clay Construction Products
MA332Q—Antifriction Bearings	*MQ315B—Socks
MA333A—Farm Machinery	*MQ311A—Flour Milling Products
MA333M—Air Conditioning and Refrigeration	*MQ325A—Inorganic Chemicals

Mandatory surveys	Voluntary surveys
MA333N—Fluid Power Products for Motion Control (Including Aerospace)	MQ325F—Paint, Varnish, and Lacquer
MA335F—Major Household Appliances	MQ334P—Telecommunications
MA335K—Wiring Devices and Supplies	MQ334R—Computers & Peripheral Equipment
MA314Q—Carpets and Rugs	
MA321T—Lumber Production and Mill Stocks	*These voluntary surveys have mandatory annual counterparts.
MA325G—Pharmaceutical Preparations, except Biologicals	
MA333P—Pumps and Compressors	
MA335E—Electric Housewares and Fans	
MA335J—Insulated Wire and Cable	
MA336G—Aerospace Industry	
M311H—Fats and Oils (Warehouse)	
M311L—Fats and Oils (Renderers)	
M311M—Fats and Oils (Consumers)	
M311N—Fats and Oils (Producers)	
MA327E—Consumer, Scientific, Technical, and Industrial Glassware	
MA333D—Construction Machinery	
MA333F—Mining, Machinery and Mineral Processing Equipment	
MA334C—Control Instruments	
MA334D—Defense, Navigational, & Aerospace Electronics	
MA334T—Meters & Test Devices	
MA334M—Consumer Electronics	
MA334Q—Semiconductors, Printed Circuit Boards, and Other Electronic Components	
MA336G—Aerospace Industry	
M311J—Oilseeds, Beans, and Nuts (Primary Producers)	
M313N—Cotton and Raw Linters in Public Storage	
M313P—Consumption on the Cotton System and Stocks	
MQ313A—Textiles	
MQ315A—Apparel	
MQ333W—Metalworking Machinery	
M311C—Corn (Wet & Dry Producers of Ethanol)	

II. Method of Collection

The Census Bureau will use mail out/mail back survey forms to collect data. It is requested that respondents return monthly report forms within 10 days, quarterly report forms within 15 days, and annual report forms within 30 days of the initial mailing. Telephone calls and/or letters encouraging participation will be mailed to respondents who have not responded by the designated time.

III. Data

OMB Control Number: 0607–0476.
Form Number: See Chart Above.
Type of Review: Regular submission.
Affected Public: Business or other for-profit organizations.
Estimated Number of Respondents: 20,184.
Estimated Time per Response: 49 minutes.
Estimated Total Annual Burden Hours: 28,280.
Estimated Total Annual Cost: $0.
Respondent's Obligation: Mandatory, voluntary.
Legal Authority: Title 13, United States Code, sections 61, 182, 224, and 225.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 15, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–8426 Filed 4–18–08; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

Proposed Information Collection; Comment Request; 2008 Business Research and Development Survey Pilot: The Redesigned Survey of Industrial Research and Development

AGENCY: U.S. Census Bureau.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: To ensure consideration, written comments must be submitted on or before June 20, 2008.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Richard Hough, U.S. Census Bureau, MCD HQ–7K150A, 4600 Silver Hill Rd., Suitland, MD 20746, (301) 763–4823 (or via the internet at *richard.s.hough@census.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

The U.S. Census Bureau, with support from the National Science Foundation (NSF), plans to conduct a pilot of the new Business Research and Development Survey (BRDS) for the 2008 survey year. The BRDS represents a revision to the currently approved annual collection of the Survey of Industrial Research and Development.

The Census Bureau has conducted the Survey of Industrial Research and Development (SIRD) since 1957, collecting primarily financial information on the systematic work companies were undertaking with the goal of discovering new knowledge or using existing knowledge to develop new or improved goods and services. During the past 50 years, the NSF and Census Bureau have made changes to the content of the SIRD based on input from companies responding to the survey as well as users of the data. The fundamental concepts of the survey were largely untouched. More recently, prompted by recommendations from the 2005 Committee on National Statistics (CNSTAT) Report, *Measuring Research and Development Expenditures in the U.S. Economy,* the NSF and Census Bureau began a full-scale redesign of the SIRD. The goal of the redesign was to produce high-quality, relevant data on R&D in the business sector that took into account the changing reality of R&D and innovation.

An inter-agency team evaluated the need for different types of data as well as the availability of those data within company records. This evaluation has resulted in numerous proposed changes. The content changes include but are not limited to:

- Adopting a definition of R&D based on accounting standards.
- Collecting worldwide R&D of domestic companies.
- Collecting business segment detail.
- Collecting R&D related capital expenditures.
- Collecting more detailed data about the R&D workforce.
- Gauging the R&D strategy of companies, and the potential impact of R&D on the market.
- Identifying R&D directed to application areas of particular national interest.
- Measuring intellectual property and technology transfer.

Because of the broad scope of the data that will be requested, it is unlikely that a single point of contact within each company will be best able to answer all the questions. The BRDS will utilize a modular instrument that will facilitate obtaining of information from various contacts within each company that have the best understanding of the concepts and definitions being presented as well as access to the information necessary to provide the most accurate response. The modules have been defined by grouping questions based on subject matter areas within the company and currently include: A financial module focused on company R&D expenses; a human resources module; an R&D strategy and management module; an IP and technology transfer module; and a module focused on R&D that is funded or paid for by third parties. A web version of the survey is also being developed using this same approach. This modular instrument design is a departure from the SIRD and poses unique challenges in terms of contact strategies. Only companies identified as having a significant amount of R&D expenses will receive the modular version of the BRDS. All other companies will receive a shorter version of the survey.

The 2008 BRDS pilot will be mailed to the entire sample. A comprehensive response analysis study will be conducted prior to the 2009 survey year. We will utilize the historic time series to evaluate data items that are intended to collect the same concepts presented in the SIRD.

II. Method of Collection

The Census Bureau will use mail out/mail back survey forms and a web based collection for the pilot. Companies will be asked to respond within 60 days of the initial mail out.

III. Data

OMB Control Number: 0607–0912.
Form Number: BRD1 & BRD1A.
Type of Review: Regular submission.
Affected Public: Business or other for-profit organizations; not for-profit institutions; r-profit; non-farm companies with 5 or more employees.
Estimated Number of Respondents: 40,000.
Estimated Time per Response: 30 minutes to 24 hours (Average time: 4 hours).
Estimated Total Annual Burden Hours: 155,300.
Estimated Total Annual Cost: $0.
Respondent's Obligation: Mandatory.
Legal Authority: Title 13 U.S.C. 182, 224, and 225.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 15, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–8429 Filed 4–18–08; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty–Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States. Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be postmarked on or before May 12, 2008. Address written comments to Statutory Import Programs Staff, Room 2104, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. at the U.S. Department of Commerce in Room 2104.
Docket Number: 08–010. Applicant: University of Dayton Research Institute, 300 College Park, Dayton, OH 45469–0106. Instrument: Electron Microscope,

Model FEI Quanta 600 FEG. Manufacturer: FEI Company, Czech Republic. Intended Use: The instrument is intended to be used for characterization of organic matrix composites. The objective of this research is to develop advanced aerospace composite materials designed for sustained service temperatures between 450F and 600F. Application accepted by Commissioner of Customs: March 25, 2008.

Docket Number: 08–011. Applicant: University of Minnesota Institute of Technology Characterization Facility, 12 Shepherd Labs, 100 Union Street SE, Minneapolis, MN 55455. Instrument: Electron Microscope, Model Tecnai G2 F30 Twin. Manufacturer: FEI Company, Netherlands. Intended Use: The instrument is intended to be used for tomographic 3D imaging of cells, cell organelles and molecular complexes, as well as high–resolution imaging at liquid nitrogen temperatures. Application accepted by Commissioner of Customs: March 27, 2008.

Docket Number: 08–012. Applicant: Alfred E. Mann Foundation for Scientific Research, 25134 Rye Canyon Loop, Suite 200, Santa Clarita, CA 91355. Instrument: Electron Microscope, Model FEI Inspect S. Manufacturer: FEI Company, Czech Republic. Intended Use: The instrument is intended to be used to examine grain size and phase transformation boundaries of ceramics, metallurgical reactions in braze and weld joints and critical dimension measurements and materials research in microelectronic components. Application accepted by Commissioner of Customs: March 31, 2008.

Docket Number: 08–013. Applicant: National Institutes of Health, 18 Library Drive, MSC 5430, Bethesda, MD 20892. Instrument: Electron Microscope, Model Tecnai G2 20 Twin. Manufacturer: FEI Company, Netherlands. Intended Use: The instrument is intended to be used to study various areas of molecular cell biology, including the mechanisms of intracellular protein trafficking, the biogenesis and dynamics of intracellular organelles, the developmental control of the cell cycle, iron metabolism in humans and the genetic response to environmental stress. Application accepted by Commissioner of Customs: April 7, 2008.

Dated: April 16, 2008.

Faye Robinson,

Director, Statutory Import Programs Staff.

[FR Doc. E8–8569 Filed 4–18–08; 8:45 am]

BILLING CODE: 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–427–801, A–428–801, A–475–801, A–588–804, A–412–801

Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Reviews

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

EFFECTIVE DATE: April 21, 2008.

FOR FURTHER INFORMATION CONTACT: Yang Jin Chun or Richard Rimlinger, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–5760 or (202) 482–4477, respectively.

SUPPLEMENTARY INFORMATION:

Background

At the request of interested parties, the Department of Commerce (the Department) initiated administrative reviews of the antidumping duty orders on ball bearings and parts thereof from France, Germany, Italy, Japan, and the United Kingdom for the period May 1, 2006, through April 30, 2007. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews, Request for Revocation in Part and Deferral of Administrative Review*, 72 FR 35690 (June 29, 2007). On November 16, 2007, we rescinded in part the administrative reviews of the antidumping duty orders on ball bearings and parts thereof from France, Germany, Italy, Japan, and the United Kingdom. See *Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Notice of Partial Rescission of Antidumping Duty Administrative Reviews*, 72 FR 64577 (November 16, 2007). On January 16, 2008, we extended the due date for the completion of the preliminary results of reviews by 75 days. See *Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Reviews*, 73 FR 2887 (January 16, 2008). The preliminary results of the reviews still underway are currently due no later than April 15, 2008.

Extension of Time Limit for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. If it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days after the last day of the anniversary month.

We determine that it is not practicable to complete the preliminary results of these reviews within the current time limit because of the number of respondents covered by these reviews and complex issues involving, *inter alia*, several respondents' recent changes in corporate structure. Therefore, we are extending the time period for issuing the preliminary results of these reviews by 15 days until April 30, 2008.

This notice is published in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2).

Dated: April 15, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E8–8571 Filed 4–18–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–549–813)

Canned Pineapple Fruit from Thailand: Notice of Final Results of Changed Circumstances Review of the Antidumping Duty Order and Revocation of Antidumping Duty Order

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

SUMMARY: On March 7, 2008, the Department of Commerce (the Department) published a notice of initiation and preliminary results of a changed circumstances review and intent to revoke the antidumping duty order on canned pineapple fruit (CPF) from Thailand. See Notice of Initiation and Preliminary Results of Changed Circumstances Review, and Intent to Revoke Order, 73 FR 12377 (March 7, 2008) (Initiation and Preliminary Results). We received no comments from interested parties. Thus, we

determine that changed circumstances exist to warrant revocation of the order.

EFFECTIVE DATE: (October 31, 2007)

FOR FURTHER INFORMATION CONTACT: Douglas Kirby or Myrna Lobo, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3782 or (202) 482–2371, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce (the Department) published the antidumping duty order on CPF from Thailand on July 18, 1995. *See Notice of Antidumping Duty Order and Amended Final Determination: Canned Pineapple Fruit from Thailand*, 60 FR 36775 (July 18, 1995) (*Antidumping Duty Order*). On January 23, 2008, the Department received a request for a changed circumstances review from the Thai Food Processors' Association (TFPA). The TFPA requested that the Department revoke the antidumping duty order because Maui Pineapple Company Ltd. (petitioner) ceased production of CPF on October 31, 2007. On January 25, 2008, we received a letter from petitioner indicating that it had no objection to the changed circumstances review and the revocation of the antidumping duty order. On March 7, 2008, the Department published a notice of initiation and preliminary results of a changed circumstances review and its intent to revoke the antidumping duty order on canned pineapple fruit from Thailand, effective October 31, 2007. *See Initiation and Preliminary Results*.

Scope of the Order

The product covered by this order is CPF, defined as pineapple processed and/or prepared into various product forms, including rings, pieces, chunks, tidbits, and crushed pineapple, that is packed and cooked in metal cans with either pineapple juice or sugar syrup added. CPF is currently classifiable under subheadings 2008.20.0010 and 2008.20.0090 of the Harmonized Tariff Schedule of the United States (HTSUS). HTSUS 2008.20.0010 covers CPF packed in a sugar–based syrup; HTSUS 2008.20.0090 covers CPF packed without added sugar (i.e., juice–packed). Although these HTSUS subheadings are provided for convenience and for customs purposes, the written description of the scope is dispositive. There have been no scope rulings for the subject order.

Final Results of Changed Circumstances Review and Revocation of Order

Pursuant to sections 751(d)(1) and 782(h)(2) of the Tariff Act of 1930, as amended (the Act), the Department may revoke an antidumping duty order based on a review under section 751(b) of the Act (*i.e.*, a changed circumstances review). Section 751(b)(1) of the Act requires a changed circumstances review to be conducted upon receipt of a request which shows changed circumstances sufficient to warrant a review.

In the instant review, based on the information provided by the TFPA and the lack of interest on the part of the domestic industry, the Department found preliminarily that, effective October 31, 2007, the sole domestic producer of the subject merchandise, Maui Pineapple Company (Maui), was no longer producing canned pineapple fruit in the United States. *See Initiation and Preliminary Results*. We did not receive any comments regarding our preliminary results. Therefore, the Department is revoking the order on canned pineapple fruit from Thailand, effective October 31, 2007.

Effective Date of Revocation

Pursuant to sections 751(c)(3)(A) and 751(c)(6)(A)(iii) of the Act and 19 CFR 351.222(i)(2)(i), the Department will instruct U.S. Customs and Border Protection to terminate the suspension of liquidation of the merchandise subject to this order entered, or withdrawn from warehouse, on or after October 31, 2007. Entries of subject merchandise prior to the effective date of revocation will continue to be subject to suspension of liquidation and antidumping duty deposit requirements. The Department will complete any pending administrative reviews of this order and will conduct an administrative review of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests for review. This notice serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.306. 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 sanctionable violation.

This determination is issued and published in accordance with sections 751(b)(1) and 777(i)(1) of the Act and 19 CFR 351.216.

Dated: April 14, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–8574 Filed 4–18–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–912

Certain New Pneumatic Off–The-Road Tires from the People's Republic of China: Affirmative Preliminary Determination of Critical Circumstances

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

EFFECTIVE DATE: April 21, 2008.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita 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) 482–4243 or (202) 482–0650, respectively.

PRELIMINARY DETERMINATION OF CRITICAL CIRCUMSTANCES Based on allegations contained in Petitioners'[1] March 11, 2008, amendment to the June 18, 2007, petition, we preliminarily find, pursuant to section 733(e) of the Tariff Act of 1930, as amended (''the Act''), and section 351.206 of the Department of Commerce (''the Department'') regulations, that critical circumstances do not exist with regard to imports of certain new pneumatic off–the-road tires (''OTR tires'') from the People's Republic of China (''PRC'') for the following entities: Guizhou Tyre Co., Ltd. (''GTC''), Guizhou Tyre I/E Corp. (''GTCIE''), Tire Engineering & Distribution Inc. (''TED''), and their affiliates (collectively ''Guizhou Tyre''), Hebei Starbright Tire Co., Ltd. (''Starbright''), Tianjin United Tire and Rubber International Co., Ltd. (''TUTRIC''), Xuzhou Xugong Tyre Co., Ltd. (''Xugong'') and the separate–rate companies[2] However, we find that

[1] Titan Tire Corporation, a subsidiary of Titan International, Inc. (''Titan''), and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO-CLC (''USW'') (collectively, ''Petitioners'').

[2] Aeolus Tyre Co., Ltd. (''Aeolus''), Double Coin Holdings Ltd. (formerly known as Shanghai Tyre & Rubber Co., Ltd.) (''Double Coin''), Double

critical circumstances do exist with respect to the PRC entity.

Background

Petitioners filed a timely allegation of critical circumstances on March 11, 2007, in accordance with section 733(e)(1) of the Act and section 351.206(c)(1) of the Department's regulations. On March 18, 2008, the Department requested that the mandatory respondents, Guizhou Tyre, Starbright, TUTRIC and Xugong report their shipments of subject merchandise to the United States on a monthly basis for the period December 2006 through December 2007. On March 28, 2008, the mandatory respondents each provided the requested information. However, Guizhou Tyre and Xugong provided shipment quantities on a per–tire basis and Starbright and TUTRIC provided shipment quantities on a per–kilogram basis. Consequently, on March 28, 2008, we requested that Guizhou Tyre and Xugong provide shipment quantities on a per–kilogram basis, and that Starbright and TUTRIC provide shipment quantities on a per–tire basis. On April 1 and 2, 2008, all four mandatory respondents provided the requested information.

Period of Investigation

The period of investigation (''POI'') is October 1, 2006, through March 31, 2007. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition (June 18, 2007).

Scope of Investigation

The products covered by the scope of the investigation are new pneumatic tires designed for off–the-road and off–highway use, subject to exceptions identified below. Certain OTR tires are generally designed, manufactured and offered for sale for use on off–road or off–highway surfaces, including but not limited to, agricultural fields, forests, construction sites, factory and warehouse interiors, airport tarmacs, ports and harbors, mines, quarries, gravel yards, and steel mills. The vehicles and equipment for which certain OTR tires are designed for use include, but are not limited to: (1) agricultural and forestry vehicles and equipment, including agricultural tractors,[3] combine harvesters,[4] agricultural high clearance sprayers,[5] industrial tractors,[6] log–skidders,[7] agricultural implements, highway–towed implements, agricultural logging, and agricultural, industrial, skid–steers/mini–loaders;[8] (2) construction vehicles and equipment, including earthmover articulated dump products, rigid frame haul trucks,[9] front end loaders,[10] dozers,[11] lift trucks, straddle carriers,[12] graders,[13] mobile cranes, compactors; and (3) industrial vehicles and equipment, including smooth floor, industrial, mining, counterbalanced lift trucks, industrial and mining vehicles other than smooth floor, skid–steers/mini–loaders, and smooth floor off–the-road counterbalanced lift trucks.[14] The foregoing list of vehicles and equipment generally have in common that they are used for hauling, towing, lifting, and/or loading a wide variety of equipment and materials in agricultural, construction and industrial settings. The foregoing descriptions are illustrative of the types of vehicles and equipment that use certain OTR tires, but are not necessarily all–inclusive. While the physical characteristics of certain OTR tires will vary depending on the specific applications and conditions for which the tires are designed (e.g., tread pattern and depth), all of the tires within the scope have in common that they are designed for off–road and off–highway use. Except as discussed below, OTR tires included in the scope of the petitions range in size (rim diameter) generally but not exclusively from 8 inches to 54 inches. The tires may be either tube–type or tubeless, radial or non–radial, and intended for sale either to original equipment manufacturers or the replacement market. The subject merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (''HTSUS'') subheadings: 4011.20.10.25, 4011.20.10.35, 4011.20.50.30, 4011.20.50.50, 4011.61.00.00, 4011.62.00.00, 4011.63.00.00, 4011.69.00.00, 4011.92.00.00, 4011.93.40.00, 4011.93.80.00, 4011.94.40.00, and 4011.94.80.00. While HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

Specifically excluded from the scope are new pneumatic tires designed, manufactured and offered for sale primarily for on–highway or on–road use, including passenger cars, race cars, station wagons, sport utility vehicles, minivans, mobile homes, motorcycles, bicycles, on–road or on–highway trailers, light trucks, and trucks and buses. Such tires generally have in common that the symbol ''DOT'' must appear on the sidewall, certifying that the tire conforms to applicable motor vehicle safety standards. Such excluded tires may also have the following designations that are used by the Tire and Rim Association:

Happiness Tyre Industries Corp., Ltd. (''Double Happiness''), Qingdao Free Trade Zone Full-World International Trading Co., Ltd. (''Full-World''), Jiangsu Feichi Co., Ltd. (''Feichi''), KS Holding Limited/KS Resources Limited (''KS Holding''), Laizhou Xiongying Rubber Industry Co., Ltd. (''Xiongying''), Oriental Tyre Technology Limited (''Oriental''), Qingdao Etyre International Trade Co., Ltd. (''Etyre7rdquo;), Qingdao Hengda Tyres Co., Ltd. (''Hengda''), Qingdao Milestone Tyre Co., Ltd. (''Milestone''), Qingdao Qihang Tyre Co., Ltd. (''Qihang''), Qingdao Qizhou Rubber Co., Ltd. (''Qizhou''), Qingdao Sinorient International Ltd. (''Sinorent''), Shandong Huitong Tyre Co., Ltd. (''Huitong''), Shandong Jinyu Tyre Co., Ltd. (''Jinyu''), Shandong Taishan Tyre Co., Ltd. (''Taishan''), Shandong Wanda Boto Tyre Co., Ltd. (''Wanda Boto''), Shandong Xingyuan International Trading Co., Ltd. (''Xingyuan''), Techking Tires Limited (''Techking''), Triangle Tyre Co., Ltd. (''Triangle Tyre''), Wendeng City Sanfeng Tyre Co., Ltd. (''Sanfeng''), and Zhaoyuan Leo Rubber Co., Ltd. (''Leo'').

[3] An agricultural tractor is a four-wheeled vehicle usually with large rear tires and small front tires that is used to tow farming equipment.

[4] A combine harvester is used to harvest crops such as corn or wheat.

[5] An agricultural sprayer is used to irrigate agricultural fields.

[6] An industrial tractor is a four-wheeled vehicle usually with large rear tires and small front tires that is used to tow industrial equipment.

[7] A log skidder has a grappling lift arm that is used to grasp, lift and move trees that have been cut down to a truck or trailer for transport to a mill or other destination.

[8] A skid-steer loader is a four-wheel drive vehicle with the left-side drive wheels independent of the right-side drive wheels and lift arms that lie alongside the driver with the major pivot points behind the driver's shoulders. Skid-steer loaders are used in agricultural, construction and industrial settings.

[9] A haul truck, which may be either rigid frame or articulated (*i.e.*, able to bend in the middle) is typically used in mines, quarries and construction sites to haul soil, aggregate, mined ore, or debris.

[10] A front loader has lift arms in front of the vehicle. It can scrape material from one location to another, carry material in its bucket or load material into a truck or trailer.

[11] A dozer is a large four-wheeled vehicle with a dozer blade that is used to push large quantities of soil, sand, rubble, etc., typically around construction sites. They can also be used to perform ''rough grading'' in road construction.

[12] A straddle carrier is a rigid frame, engine-powered machine that is used to load and offload containers from container vessels and load them onto (or off of) tractor trailers.

[13] A grader is a vehicle with a large blade used to create a flat surface. Graders are typically used to perform ''finish grading.'' Graders are commonly used in maintenance of unpaved roads and road construction to prepare the base course onto which asphalt or other paving material will be laid.

[14] A counterbalanced lift truck is a rigid frame, engine-powered machine with lift arms that has additional weight incorporated into the back of the machine to offset or counterbalance the weight of loads that it lifts so as to prevent the vehicle from overturning. An example of a counterbalanced lift truck is a counterbalanced fork lift truck. Counterbalanced lift trucks may be designed for use on smooth floor surfaces, such as a factory or warehouse, or other surfaces, such as construction sites, mines, *etc.*

Prefix letter designations:

• P - Identifies a tire intended primarily for service on passenger cars;
• LT - Identifies a tire intended primarily for service on light trucks; and,
• ST - Identifies a special tire for trailers in highway service.

Suffix letter designations:

• TR - Identifies a tire for service on trucks, buses, and other vehicles with rims having specified rim diameter of nominal plus 0.156″ or plus 0.250″;
• MH - Identifies a tire for Mobile Homes;
• HC - Identifies a heavy duty tire designated for use on ''HC'' 15″ tapered rims used on trucks, buses, and other vehicles. This suffix is intended to differentiate among tires for light trucks, and other vehicles or other services, which use a similar designation.
• Example: 8R17.5 LT, 8R17.5 HC;
• LT - Identifies light truck tires for service on trucks, buses, trailers, and multipurpose passenger vehicles used in nominal highway service; and
• MC - Identifies tires and rims for motorcycles.

The following types of tires are also excluded from the scope: pneumatic tires that are not new, including recycled or retreaded tires and used tires; non–pneumatic tires, including solid rubber tires; tires of a kind used on aircraft, all–terrain vehicles, and vehicles for turf, lawn and garden, golf and trailer applications; and tires of a kind used for mining and construction vehicles and equipment that have a rim diameter equal to or exceeding 39 inches. Such tires may be distinguished from other tires of similar size by the number of plies that the construction and mining tires contain (minimum of 16) and the weight of such tires (minimum 1500 pounds).

Critical Circumstances

On March 11, 2008, Petitioners alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to the antidumping investigation of OTR tires from the PRC. Because Petitioners submitted critical circumstances allegations more than 30 days before the scheduled date of the final determination but later than 20 days before the preliminary determination, the Department must issue a preliminary determination of critical circumstances within 30 days of Petitioners' submitted allegation.[15] Section 733(e)(1) of the Act provides that, upon receipt of a timely allegation of critical circumstances, the Department will determine whether there is a reasonable basis to believe or suspect that: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period.

Section 351.206(h)(1) of the Department's regulations provides that, in determining whether imports of the subject merchandise have been ''massive,'' the Department normally will examine (i) the volume and value of the imports, (ii) seasonal trends, and (iii) the share of domestic consumption accounted for by the imports. In addition, section 351.206(h)(2) of the Department's regulations provides that, ''In general, unless the imports during the relatively short period' . . . have increased by at least 15 percent over the imports during an immediately preceding period of comparable duration, the Secretary will not consider the imports massive.''

Section 351.206(i) of the Department's regulations defines ''relatively short period'' as generally the period beginning on the date the proceeding begins (*i.e.*, the date the petition is filed) and ending at least three months later. This section provides further that, if the Department ''finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely,'' the Department may consider a period of not less than three months from that earlier time.

In determining whether the above statutory criteria have been satisfied, we examined the following information: (1) the evidence presented in Petitioners' March 11, 2008, submission; (2) evidence obtained since the initiation of the less–than-fair–value (''LTFV'') investigation (*i.e.*, import statistics released by the U.S. Census Bureau); and (3) the International Trade Commission's (''ITC'') preliminary material injury determination.[16]

In determining whether a history of dumping and material injury exists, the Department generally considers current or previous antidumping duty orders on subject merchandise from the country in question in the United States and current orders in any other country with regard to imports of subject merchandise. Petitioners made no statement concerning a history of dumping with respect to OTR tires from the PRC. We are not aware of any other antidumping order in the United States or in any country on OTR tires from the PRC. Therefore, the Department finds no history of injurious dumping of OTR tires from the PRC pursuant to section 733(e)(1)(A)(i) of the Act.

In determining whether an importer knew, or should have known, that the exporter was selling subject merchandise at LTFV, the Department must rely on the facts before it at the time the determination is made. The Department normally considers margins of 25 percent or more for export price (''EP'') sales and 15 percent or more for constructed export price (''CEP'') sales sufficient to impute importer knowledge of sales at LTFV.[17] For the mandatory respondents in this investigation, our preliminary determination found margins of 16.35 percent for Guizhou Tyre, 19.73 percent for Starbright, 10.98 percent for TUTRIC, and 51.81 percent for Xugong. The separate–rate companies received a margin of 24.75 percent based on the calculated weighted–average margins of Guizhou Tyre, Starbright, TUTRIC and Xugong. The PRC entity received a margin of 210.48 percent.[18] Based on these margins, the Department preliminarily finds that an importer knew, or should have known, that Guizhou Tyre, Starbright, Xugong, the separate–rate companies and the PRC entity were selling subject merchandise at LTFV.[19] TUTRIC's preliminary margin did not

[15] *See* Section 351.206(c)(2)(ii) of the Department's regulations.

[16] *See Investigation Nos. 701-TA-448 and 731-TA-1117 (Preliminary), Certain Off-the-Road Tires From China*, 72 FR 50699, (September 4, 2007) (''ITC Preliminary Determination'').

[17] *See, e.g., Carbon and Alloy Steel Wire Rod From Germany, Mexico, Moldova, Trinidad and Tobago, and Ukraine: Notice of Preliminary Determination of Critical Circumstances*, 67 FR 6224, 6225 (February 11, 2002) (unchanged in the final determination).

[18] *See Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 73 FR 9278 (February 20, 2008) (''Preliminary Determination'').

[19] In this investigation, Guizhou Tyre reported making both CEP and EP sales, and Starbright reported making only CEP sales. We based our analysis for TUTRIC and Xugong on EP sales. Because CEP sales constitute the vast majority of Guizhou Tyre's total U.S. sales by quantity, we find that it is appropriate to base our finding of knowledge of dumping on whether Guizhou Tyre's margin exceeds 15 percent. *See Notice of Final Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the Republic of Korea*, 71 FR 29310 (May 22, 2006), and accompanying Issues and Decision Memorandum at Comment 9.

meet the threshold for imputing knowledge of dumping.

In determining whether an importer knew or should have known that there was likely to be material injury caused by reason of such imports, the Department normally will look to the preliminary injury determination of the ITC. If the ITC finds a reasonable indication of present material to the relevant U.S. industry, the Department will determine that a reasonable basis exists to impute importer knowledge that material injury is likely by reason of such imports.[20] In the present case, the ITC preliminarily found a reasonable indication that an industry in the United States is materially injured by imports of OTR tires from the PRC.[21]

Based on the ITC's preliminary determination of material injury and the preliminary dumping margins for Guizhou Tyre, Starbright, Xugong, the separate–rate companies and the PRC entity, the Department preliminarily finds that there is a reasonable basis to believe or suspect that the importers knew, or should have known, that there was likely to be material injury by means of sales of subject merchandise at LTFV of subject merchandise from these respondents.

Pursuant to section 351.206(h) of the Department's regulations, in general, we will not consider imports to be massive unless imports have increased by at least 15 percent during a relatively ''short period.'' The Department normally considers a ''relatively short period'' as the period beginning on the date the proceeding begins and ending at least three months later.[22] The Department normally compares the import volumes of the subject merchandise for at least three months immediately preceding the filing of the petition (*i.e.*, the ''base period'') to a comparable period of at least three months following the filing of the petition (*i.e.*, the ''comparison period''). According to the regulations, ''if the Secretary finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, then the Secretary may consider a time period of not less than three months from that earlier time.'' Imports normally will be considered massive when imports during the comparison period have increased by 15 percent or more compared to imports during the base period.[23]

Petitioners based their allegation of critical circumstances in this investigation on the increase in imports of OTR tires that began with the filing of the antidumping duty petition on June 18, 2007, and continued through the preliminary determination on February 5, 2008. The Department's practice is to rely upon the longest period for which information is available from the month that the petition was filed through the date of the preliminary determination.[24] We have chosen a period of six months as reflective of the ''relatively short period'' commanded by the statute for determining whether imports have been massive.[25] In applying the six–month period, we used a base period of July 2007 through December 2007 and a comparison period of December 2006 through May 2007. The Department requested that the respondents in this investigation provide monthly shipment data for the period December 2006 through December 2007.

On March 28, April 1 and April 2, 2008, the Department received company–specific data from all four mandatory respondents. We selected kilograms as the appropriate measurement by which to conduct this analysis. When we compared these companies' import data during the base period with the comparison period, we found that the volume of imports of OTR tires from the mandatory respondents did not increase over the base period by 15 percent and, thus, based upon section 351.206(h) of the Department's regulations, we did not find them to be massive.[26]

We did not request the monthly shipment information necessary to determine if there were massive imports for the separate–rate companies. To measure whether massive imports existed for purposes of critical circumstances, we relied on the experience of the mandatory respondents. As explained above, we compared the weighted–average import data during the base and comparison periods for all mandatory respondents, and determined that the increase in volume did not exceed 15 percent for any of the mandatory respondents. Therefore, based upon section 351.206(h) of the Department's regulations, we do not find the imports of the separate–rate companies to be massive.

Because the PRC entity did not respond to our antidumping questionnaire, we were unable to obtain shipment data from the PRC entity for purposes of our critical–circumstances analysis and there is, therefore, no verifiable information on the record with respect to its export volumes. Section 776(a)(2) of the Act provides that:

> If – an interested party or any other person – (A) withholds information that has been requested by the administering authority or the Commission under this title, (B) fails to provide such information by the deadlines for submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782, (C) significantly impedes a proceeding under this title, or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority and the Commission shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.

The statute requires that certain conditions be met before the Department may resort to the facts otherwise available. When the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. Because the PRC entity did not respond to the Department's request for information, we used facts available, in accordance with section 776(a) of the Act, in determining whether there were massive imports of merchandise produced by the PRC entity.

Section 776(b) of the Act provides that if the Department finds that the respondent ''has failed to cooperate by not acting to the best of its ability to comply with a request for information . . .{the Department} may use an inference that is adverse to the interests of that party in selecting from among the

[20] *See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon Steel Plate from the People's Republic of China*, 62 FR 61964 (November 20, 1997).

[21] See ITC Preliminary Determination.

[22] *See* section 351.206(i) of the Department's regulations.

[23] *See* section 351.206(c)(2) of the Department's regulations.

[24] *See Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China*, 68 FR 66800, 66809 (November 28, 2003) (unchanged in the final determination).

[25] *See* section 733(e)(1)(B) of the Act.

[26] *See* Memorandum, ''Less-than-Fair-Value Investigation of Certain New Pneumatic Off-The-Road Tires (''OTR Tires7rdquo;) from the People's Republic of China (''PRC''), Affirmative Preliminary Determination of Critical Circumstance,'' dated concurrently with this notice.

facts otherwise available.'' We have determined that, in not responding to the Department's questionnaires, the PRC entity has not acted to the best of its ability and an adverse inference is warranted.[27] Thus, we have made an adverse inference that there were massive imports from the PRC entity over a relatively short period.

In this case, the HTS numbers listed in the scope of the investigation include both subject merchandise and non–subject merchandise, and thus, we were not able to distinguish the amounts of shipments accounted for by the mandatory and separate rate respondents from the amount of shipments accounted for by the PRC–wide entity with respect to subject merchandise.[28] Accordingly, we were not able to use the U.S. Census Bureau data to corroborate our adverse inference. However, as the SAA states, ''The fact that corroboration may not be practicable in a given circumstance will not prevent the agencies from applying an adverse inference under subsection (b).''[29]

We will issue a final determination concerning critical circumstances for all exporters of subject merchandise from the PRC when we issue our final determination in this investigation, which will be not later than July 7, 2008, the first business day after the statutory deadline of July 4, 2008.

Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than three days after the publication of the preliminary determination of critical circumstances in this proceeding. Rebuttal briefs limited to issues raised in the aforementioned case briefs will be due no later than two days after the deadline date for case briefs.

Suspension of Liquidation

With respect to the PRC entity, we will direct CBP to suspend liquidation of all unliquidated entries of OTR tires from the PRC that were entered, or withdrawn from warehouse, for consumption on or after November 22, 2007, which is 90 days prior to February 20, 2008, the date of publication in the **Federal Register** of our preliminary determination in this investigation. With respect to the mandatory respondents, Guizhou Tyre, Starbright, TUTRIC and Xugong, and the separate–rate companies, in accordance with section 733(d) of the Act, we will make no changes to our instructions to CBP with respect to the suspension of liquidation of all entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after February 20, 2008.

This determination is issued and published in accordance with Sections 733(f) and 777(i)(1) of the Act.

Dated: April 11, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–8575 Filed 4–18–08; 8:45 am]

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[27] *See* Preliminary Determination.

[28] *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Japan, Part II*, 64 FR 30574, 30585 (June 8, 1999).

[29] *See* Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, H. Doc. No. 316, 103d Cong., 2d Session, Vol. 1 (1994) at 870.

DEPARTMENT OF COMMERCE

International Trade Administration

(A–580–816)

Corrosion–Resistant Carbon Steel Flat Products from Korea: Extension of Time Limits for the Final Results of Antidumping Duty New Shipper Review

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

EFFECTIVE DATE: April 21, 2008.

FOR FURTHER INFORMATION CONTACT: Victoria Cho or George McMahon, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–5075 and (202) 482–1167, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 23, 2008, the Department published the preliminary results of the new shipper review of the antidumping duty order on certain corrosion–resistant carbon steel products (CORE) from the Republic of Korea. *See Certain Corrosion–Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Preliminary Results of Antidumping Duty New Shipper Review*, 73 FR 3925 (January 23, 2008). The final results are currently due no later than April 14, 2008.

Extension of Time Limit of Preliminary Results

Section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue the final results of a new shipper review within 90 days after the date on which the preliminary results were issued. However, if the Department concludes that the case is extraordinarily complicated, it may extend the 90–day period to 150 days. Interested parties raised several complex issues pertaining to Haewon MSC Co., Ltd.'s cost of production and financial ratios that require a significant amount of analysis by the Department. Given the complex issues raised by the parties in their comments on our preliminary results, and in accordance with section 751(a)(2)(B)(iv) of the Act, we are extending the time period for issuing the final results of review to 150 days after the publication of the preliminary results. Therefore, as that day falls on a Saturday, the final results are now due no later than June 23, 2008, the next business day.

This extension is issued and published in accordance with sections 751(a)(2)(B)(iv) and 777(i)(1) of the Act and 19 CFR 351.214(i)(2).

Dated: April 9, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E8–8570 Filed 4–18–08; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[Application No. 88–10A16]

Export Trade Certificate of Review

ACTION: Notice of application (#88–10A16) to amend the Export Trade Certificate of Review Issued to Wood Machinery Manufacturers of America.

SUMMARY: Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review. This notice summarizes the proposed amendment and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Jeffrey Anspacher, Director, Export Trading Company Affairs, International Trade Administration, (202) 482–5131 (this is not a toll-free number) or E-mail at *oetca@ita.doc.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in

the Certificate from state and federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Export Trading Company Affairs, International Trade Administration, U.S. Department of Commerce, Room 7021–X, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as ''Export Trade Certificate of Review, application number 88–10A16.''

The Wood Machinery Manufacturers of America's original Certificate was issued on February 3, 1989 (54 FR 6312, February 9, 1989), and last amended on August 8, 2005 (70 FR 47178, August 12, 2005). A summary of the current application for an amendment follows.

Summary of the Application

Applicant: Wood Machinery Manufacturers of America (''WMMA''), 100 North 20th Street, 4th Floor, Philadelphia, PA 19103–1443.

Contact: Harold Zassenhaus, Export Consultant, Telephone: (301) 652–0693.

Application No.: 88–10A16.

Date Deemed Submitted: April 10, 2008.

Proposed Amendment: WMMA seeks to amend its Certificate to:

1. Add the following company as a new ''Member'' of the Certificate within the meaning of section 325.2(l) of the Regulations (15 CFR 325.2(l)): Mattison Rotary Lathes, LLC, La Center, Kentucky; Safety Speed Cut Manufacturing Company, Inc., Ham Lake, Minnesota; Western Cutterheads, Inc., La Center, Kentucky.

2. Reinstate as a ''Member'' of the Certificate within the meaning of section 325.2(l) of the Regulations (15 CFR 325.2(l)): The Original Saw Company (''OSC''), Britt, Iowa. OSC ceased to be a Member on April 12, 2007, when WMMA submitted an annual report that relinquished OSC's membership. WMMA seeks to reinstate OSC as a Member of the Certificate.

3. Delete the following company as a Member of WMMA's Certificate: Warsaw Machinery, Inc., Warsaw, Indiana.

Dated: April 15, 2008.

Jeffrey C. Anspacher,

Director, Export Trading Company Affairs.

[FR Doc. E8–8521 Filed 4–18–08; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

A–570–888

Floor–Standing, Metal–Top Ironing Tables and Parts Thereof from the People's Republic of China: Extension of the Time Limit for the Preliminary Results of the 2006/2007 Administrative Review

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

EFFECTIVE DATE: April 21, 2008.

FOR FURTHER INFORMATION CONTACT: Bobby Wong or Toni Dach, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482–0409 or (202) 482–1655, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 6, 2004, the Department of Commerce (''Department'') published in the **Federal Register** an antidumping duty order on floor standing, metal–top ironing tables and parts thereof from the People's Republic of China (''PRC''). *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Floor–Standing, Metal–Top Ironing Tables and Certain Parts Thereof From the People's Republic of China*, 69 FR 47868 (August 6, 2004). The Department received timely requests from Since Hardware (Guangzhou) Co., Ltd. (''Since Hardware'') and Forever Holdings Limited (''Forever Holdings''), in accordance with 19 CFR 351.213(b)(2), for an administrative review of the antidumping duty order on ironing tables and parts thereof from the PRC, which has an August annual anniversary month. Home Products International Inc., the petitioner, also requested, in accordance with 19 CFR 351.213(b)(1), an administrative review of the antidumping duty order on ironing tables and parts thereof from the PRC for Since Hardware. On September 25, 2007, the Department initiated an administrative review with respect to Since Hardware and Forever Holdings. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 72 FR 54428 (September 25, 2007).

The deadline for completion of the preliminary results in the administrative review for Since Hardware and Forever Holdings is currently May 2, 2008.

Extension of Time Limits for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), and section 351.213(h)(1) of the Department's regulations require the Department to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of the order or suspension agreement for which the administrative review was requested, and the final results of the review within 120 days after the date on which the notice of the preliminary results was published in the **Federal Register**. However, if the Department determines that it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations allow the Department to extend the 245-day period to 365 days and the 120-day period to 180 days.

Pursuant to section 751(a)(3)(A) of the Act and section 351.213(h) of the Department's regulations, we determine that it is not practicable to complete this administrative review within the statutory time limit of 245 days. The Department requires additional time to analyze questionnaire responses, and issue supplemental questionnaires. In particular, there are complex factors of production methodology issues that the Department requires additional time to analyze. Therefore, in accordance with section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations, the Department is extending the time limit for the completion of these preliminary

results by 120 days. Since the new deadline would have fallen on Saturday, August 30, 2008, and Monday, September 1, 2008, is a federal holiday, the deadline is Tuesday, September 2, 2008. The final results, in turn, will be due 120 days after the date of issuance of the preliminary results, unless extended.

This notice is published in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: April 14, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E8–8572 Filed 4–18–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–847]

Persulfates from the People's Republic of China: Continuation of Antidumping Duty Order

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

SUMMARY: As a result of the determinations by the Department of Commerce (''Department'') and the International Trade Commission (''ITC'') that revocation of the existing antidumping duty order on persulfates from the People's Republic of China (''PRC'') would likely lead to continuation or recurrence of dumping and material injury to an industry in the United States, the Department is publishing this notice of continuation of the antidumping duty (''AD'') order.

EFFECTIVE DATE: April 21, 2008.

FOR FURTHER INFORMATION CONTACT: Charles Riggle or Lilit Astvatsatrian, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: 202–482–0650 or 202–482–6412, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 1, 2007, the Department published the notice of initiation of the sunset review of the antidumping duty order on persulfates from the PRC pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). *See Initiation of Five-year (''Sunset'') Reviews*, 72 FR 61861 (November 1, 2007) (''*Initiation Notice*''); *see also, Amended Antidumping Duty Order: Persulfates From the People's Republic of China*, 62 FR 39212 (July 22, 1997) (''*Order*''). As a result of its review, the Department found that revocation of the AD order would likely lead to continuation or recurrence of dumping and notified the ITC of the margins likely to prevail were the order revoked. *See Persulfates from the People's Republic of China: Notice of Final Results of Expedited Sunset Review of Antidumping Duty Order*, 73 FR 11868 (March 5, 2008) (''*Persulfates Final*''). On March 31, 2008, the ITC determined, pursuant to section 751(c) of the Act, that revocation of the AD order on persulfates from the PRC would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See* USITC Publication 3988 Inv. No. 731–TA- 749 (Review) (March 2007).

Scope of the Order

The products covered by this order are persulfates, including ammonium, potassium, and sodium persulfates. The chemical formula for these persulfates are, respectively, (NH4)2S2O8, K2S2O8, and Na2S2O8. Potassium persulfates are currently classifiable under subheading 2833.40.10 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Sodium persulfates are classifiable under HTSUS subheading 2833.40.20. Ammonium and other persulfates are classifiable under HTSUS subheadings 2833.40.50 and 2833.40.60. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Continuation of Order

As a result of the determinations by the Department and the ITC that revocation of the AD order on persulfates from the PRC would likely lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the AD order on persulfates from the PRC. U.S. Customs and Border Protection will continue to collect antidumping duty cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. This review covers imports from all manufacturers and exporters of persulfates from the PRC.

The effective date of continuation of this AD order will be the date of publication in the **Federal Register** of this Continuation Notice. Pursuant to section 751(c)(2) of the Act, the Department intends to initiate the next five–year review of this order not later than March 2013.

This five–year or ''sunset'' review and notice are in accordance with section 751(c) of the Act and published pursuant to section 777(i)(1) of the Act.

Dated: April 11, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–8562 Filed 4–18–08; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 080415567–8568–01]

FY 2008 Broad Agency Announcement

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of funding availability.

SUMMARY: The purpose of this notice is to request proposals for special projects and programs associated with the Agency's strategic plan and mission goals, as well as to provide the general public with information and guidelines on how NOAA will select proposals and administer discretionary Federal assistance under this BAA. This BAA is a mechanism to encourage research, education and outreach, innovative projects, or sponsorships that are not addressed through our competitive discretionary programs. It is not a mechanism for awarding Congressionally directed funds. Funding for potential projects in this notice is contingent upon the availability of Fiscal Year 2008 and Fiscal Year 2009 appropriations. Applicants are hereby given notice that funds have not yet been appropriated for any proposed activities in this notice. Publication of this announcement does not oblige NOAA to review an application beyond an initial administrative review, or to award any specific project, or to obligate any available funds.

DATES: Full applications can be submitted on a rolling basis starting April 22, 2008, up to 5 PM Eastern Daylight Time September 30, 2009. Applications received after this time will not be reviewed or considered for funding.

ADDRESSES: Applications are available through grants.gov, and can be searched for using Funding Opportunity Number NFA-NFA–2008–2001388. For those

applicants without internet access, application forms can be acquired by contacting the individuals listed under the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT:

National Environmental Satellite Data Information Service (NESDIS)
Ingrid Guch
301–763–8282
Hqtr. Route: E/RA1
Bldg: WWBG RM: 701
5200 Auth RD
Camp Springs MD 20746–4304

National Marine Fisheries Service (NMFS)
JoAnna Grable
301–713–1364
Hqtr. Route: F/MB2
Bldg: SSMC3 Rm: 14359
1315 East-West Hwy
Silver Spring, MD 20910–3282

National Ocean Service (NOS)
Jane Piercy
301–713–3050
Hqtr. Route: N/MB3
Bldg: SSMC4 Rm: 13250
1305 East-West Hwy
Silver Spring MD 20910–3281

National Weather Service (NWS)
Youngnan Cohan
301–713–0420
NWS Hqtr Route: W/CFO2
Bldg: SSMC2 Rm: 18394
1325 East-West Hwy
Silver Spring MD 20910

Office of Atmospheric Research (OAR)
Sharon Schroeder
301–713–2474
Hqrt. Route: R/OM61
Bldg: SSMC3 Rm: 11464
1315 East-West Hwy
Silver Spring MD 20910–3282

NOAA Office of Education (OED)
Sarah Schoedinger
704–370–3528
Bldg: HCHB Room: 6863
1401 Constitution Ave., NW
Washington DC 20230–0001

SUPPLEMENTARY INFORMATION: The purpose of this notice is to request proposals for special projects and programs associated with the Agency's strategic plan and mission goals, as well as to provide the public with information and guidelines on how NOAA will select proposals and administer discretionary Federal assistance under this BAA. This BAA is a mechanism to encourage research, education and outreach, innovative projects, or sponsorships that are not normally funded through our competitive discretionary programs. It is not a mechanism to award Congressionally directed funds.

ELECTRONIC ACCESS: The full text of the full funding opportunity announcement for this program can be accessed via the Grants.gov web site at *http://www.grants.gov*. The announcement will also be available by contacting the program officials identified under **FOR FURTHER INFORMATION CONTACT**. Applicants must comply with all requirements contained in the full funding opportunity announcement.

STATUTORY AUTHORITY: The specific program authority will vary depending on the nature of the proposed project. A list of the most prevalent assistance authorities are 15 U.S.C. 1540; 15 U.S.C. 2901 *et seq.*; 16 U.S.C. 661; 16 U.S.C. 1456c; 33 U.S.C. 883a-d; 33 U.S.C. 893a(a); 33 U.S.C. 1442; 49 U.S.C. 44720(b).

CFDA NUMBER: Multiple CFDA Numbers. The CFDA numbers can be found in the Full Funding Opportunity.

FUNDING AVAILABILITY: There are no funds specifically appropriated by Congress for this BAA. Funding for potential projects in this notice is contingent upon the availability of Fiscal Year 2008, Fiscal Year 2009 and Fiscal Year 2010 appropriations. Applicants are hereby given notice that funds have not yet been appropriated for any proposed activities in this notice. Publication of this announcement does not oblige NOAA to review an application beyond an initial administrative review, award any specific project, or obligate any available funds.

ELIGIBILITY: Eligible applicants may be institutions of higher education, nonprofits, commercial organizations, international or foreign organizations or governments, individuals, state, local and Indian tribal governments. Eligibility also depends on the statutory authority that permits NOAA to fund the proposed activity. Refer to the CFDA in order to determine an applicant's eligibility.

COST SHARING REQUIREMENTS: Cost sharing is not required unless it is determined that a project can only be funded under an authority that requires matching/cost sharing funds.

EVALUATION AND SELECTION PROCEDURES: The general evaluation criteria and selection factors that apply to full applications to this funding opportunity are summarized below. The evaluation criteria for full applications will have different weights and details. Further information about the evaluation criteria and selection factors can be found in the full funding opportunity announcement.

EVALUATION CRITERIA FOR PROJECTS: NOAA has standardized evaluation criteria for all competitive assistance announcements. The criteria for this BAA are listed below. Since proposals responding to this BAA may vary significantly in their activities/objectives, assigning a set weight for each evaluation criterion is not feasible but is based on a total possible score of 100. The Program Office and/or Selection Official will determine which of the following criteria and weights will be applied. Some proposals, for example sponsorships, may not be able to address all the criteria like technical/scientific merit. However, it is in your best interest to prepare a proposal that can be easily evaluated against these five criteria.

1. Importance and/or relevance and applicability of proposed project to the mission goals: This ascertains whether there is intrinsic value in the proposed work and/or relevance to NOAA, federal, regional, state, or local activities: i.e., How does the proposed activity enhance NOAA's strategic plan and mission goals? Proposals should also address significance/possibilities of securing productive results, i.e., Does this study address an important problem?; If the aims of the application are achieved, how will scientific knowledge be advanced?; What will be the effect of these studies on the concepts or methods that drive this field?; What effect will the project have on improving public understanding of the role the ocean, coasts, and atmosphere in the global ecosystem? Proposals may also be scored for innovation, i.e., Does the project employ novel concepts, approaches or methods? Are the aims original and innovative? Does the project challenge existing paradigms or develop new methodologies or technologies?

2. Technical/scientific merit: This assesses whether the approach is technically sound and if the methods are appropriate, and whether there are clear project goals and objectives. Proposals should address the approach/soundness of design: i.e., Are the conceptual framework, design, methods, and analyses adequately developed, well-integrated, and appropriate to the aims of the project? Does the applicant acknowledge potential problem areas and consider alternative tactics? This criterion should also address the applicants proposed methods for monitoring, measuring, and evaluating the success or failure of the project, i.e., What are they? Are they appropriate?

3. Overall qualifications of applicants: This ascertains whether the applicant possesses the necessary education, experience, training, facilities, and administrative resources to accomplish the project. If appropriate, proposals should also address the physical environment and collaboration, if any, i.e., Does the environment in which the work will be done contribute to the probability of success? Do the proposed experiments or activities take advantage of unique features of the intended environment or employ useful collaborative arrangements?

4. Project costs: The Budget is evaluated to determine if it is realistic and commensurate with the project needs and time-frame.

5. Outreach and education: NOAA assesses whether this project provides a focused and effective education and outreach strategy regarding NOAA's mission to protect the Nations environmental resources. For example, how will the outcomes of the project be communicated to NOAA and the interested public to ensure it has met the project objectives over the short, medium or long term? Does the project address any of the goals or employ any of the strategies of the NOAA Education Plan (*http://www.oesd.noaa.gov/NOAA__Ed__Plan.pdf*)?

REVIEW AND SELECTION PROCESS: Upon receipt of a full application by NOAA, an initial administrative review will be conducted to determine eligibility for award, compliance with requirements and completeness of the application. This review includes determining whether:

1. Sufficient funds are available in the budget of the program office receiving the application to support the proposed project;

2. Statutory authority exists to provide financial assistance for the project or organization;

3. A complete application package has been submitted;

4. The Project Description/Narrative is consistent with one or more of NOAA's mission goals; and,

5. The proposal falls within the scope of an existing NOAA competitive announcement (**Federal Register** Notices can be found at *www.Grants.gov* to find recent competitive announcements) or duplicates an existing nondiscretionary project announced or awarded in FY08, FY09 or FY10 (if it does, it cannot be funded under this announcement); and,

6. The work in the proposal directly benefits NOAA (if it will, it should be supported by a procurement contract, not a financial assistance award which cannot be funded under this announcement, as provided in 31 U.S.C. 6303). Applications not passing this initial review will not be considered further for funding through this BAA. NOAA will evaluate proposal(s) that are eligible that comply with all the requirements, under this BAA individually (i.e., proposals will be not compared to each other). A merit review will be conducted by mail reviewers and/or peer panel reviewers. Each reviewer will individually evaluate the proposal(s) using the evaluation criteria provided above. A minimum of three merit reviewers per proposal is required. The reviewers may be any combination of Federal and/or non-federal personnel. The proposal(s) will be individually scored (i.e., a consensus is not reached) unless all reviewers are Federal employees. If all of the reviewers are Federal employees, the program officer has the discretion to authorize a score based on consensus. NOAA selects evaluators on the basis of their professional qualifications and expertise as related to the unique characteristics of the proposal. The NOAA Program Officer will assess the evaluations and make a fund or do-not-fund recommendation to the Selecting Official based on the evaluations of the reviewers. Any application considered for funding may be required to address the issues raised in the evaluation of the proposal by the reviewers, Program Officer, Selecting Official, and/or Grants Officer before an award is issued. Applications not selected for funding in FY2008 or FY2009 may be considered for funding from FY2010 funds but may be, in response to NOAA's request, required to revalidate the terms of the original application or resubmit in the next BAA cycle if one is published for FY2010. The Program Officer, Selecting Official and/or Grants Officer may negotiate the final funding level of the proposal with the intended applicant. The Selecting Official makes the final recommendation for award to the NOAA Grants Officer who is authorized to commit the Federal Government and obligate the funds.

INTERGOVERNMENTAL REVIEW: Applications submitted under this notice may be subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.'' Refer to the appropriate CFDA number listed on your application for the applicability of this E.O. to your proposal.

LIMITATION OF LIABILITY: In no event will NOAA or the Department of Commerce be responsible for proposal preparation costs if these proposed activities fail to receive funding or are cancelled because of other agency priorities. Publication of this announcement does not oblige NOAA to award any specific project or to obligate any available funds.

NATIONAL ENVIRONMENTAL POLICY ACT (NEPA): NOAA must analyze the potential environmental impacts, as required by the National Environmental Policy Act (NEPA), for applicant projects or proposals which are seeking NOAA federal funding opportunities. Detailed information on NOAA compliance with NEPA can be found at the following NOAA NEPA website: *http://www.nepa.noaa.gov/* , including our NOAA Administrative Order 216–6 for NEPA, *http://www.nepa.noaa.gov/NAO216__6__TOC.pdf*, and the Council on Environmental Quality implementation regulations, *http://ceq.eh.doe.gov/nepa/regs/ceq/toc__ceq.htm*. Consequently, as part of an applicant's package, and under their description of their program activities, applicants are required to provide detailed information on the activities to be conducted, locations, sites, species and habitat to be affected, possible construction activities, and any environmental concerns that may exist (e.g., the use and disposal of hazardous or toxic chemicals, introduction of non-indigenous species, impacts to endangered and threatened species, aquaculture projects, and impacts to coral reef systems). In addition to providing specific information that will serve as the basis for any required impact analyses, applicants may also be requested to assist NOAA in drafting of an environmental assessment, if NOAA determines an assessment is required. Applicants will also be required to cooperate with NOAA in identifying feasible measures to reduce or avoid any identified adverse environmental impacts of their proposal. The failure to do so shall be grounds for not selecting an application. In some cases if additional information is required after an application is selected, funds can be withheld by the Grants Officer under a special award condition requiring the recipient to submit additional environmental compliance information sufficient to enable NOAA to make an assessment on any impacts that a project may have on the environment.

THE DEPARTMENT OF COMMERCE PRE-AWARD NOTIFICATION REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS: The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of February 11, 2008 (73 FR 7696), are applicable to this solicitation.

PAPERWORK REDUCTION ACT: This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Standard Forms 424, 424A, 424B, and SF–LLL and CD–346 has been approved by the Office of Management and Budget (OMB) under the respective control numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046, and 0605–0001. Notwithstanding any other provision of law, no person is required to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

EXECUTIVE ORDER 12866: This notice has been determined to be not significant for purposes of Executive Order 12866.

EXECUTIVE ORDER 13132 (FEDERALISM): It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

ADMINISTRATIVE PROCEDURE ACT/REGULATORY FLEXIBILITY ACT: Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act or any other law for rules concerning public property, loans, grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements for the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Dated: April 16, 2008.

Helen Hurcombe

Director, Acquisition and Grants Office, National Oceanic and Atmospheric Administration.

[FR Doc. E8–8581 Filed 4–18–08; 8:45 am]

BILLING CODE 3510–12–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Sea Grant Review Panel

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Sea Grant Review Panel. The meeting will have several purposes. Panel members will discuss and provide advice to the National Sea Grant College Program in the areas of staffing and resource needs at the National Sea Grant Office, the designation of Pennsylvania State University as a Sea Grant Institutional Program and a response to Congressional questions posed by Members of the U.S. House of Representatives' Natural Resources Committee in regard to Sea Grant re-authorization.

DATES: The announced meeting is scheduled for: Tuesday, April 29, 2008.

ADDRESSES: Conference call. Public access is available at SSMC Bldg 3, Room #12836, 1315 East-West Highway, Silver Spring, MD.

FOR FURTHER INFORMATION CONTACT: Ms. Gina Barrera, National Sea Grant College Program, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Room 11875, Silver Spring, Maryland 20910, (301) 734–1077.

SUPPLEMENTARY INFORMATION: The Panel, which consists of a balanced representation from academia, industry, state government and citizens groups, was established in 1976 by Section 209 of the Sea Grant Improvement Act (Public Law 94–461, 33 U.S.C. 1128). The Panel advises the Secretary of Commerce and the Director of the National Sea Grant College Program with respect to operations under the Act, and such other matters as the Secretary refers to them for review and advice. The agenda for the meeting is as follows:

Tuesday, April 29, 2008—3 to 5 p.m., EST

Agenda

I. Administrative Review Committee Report.

II. Pennsylvania Sea Grant Institutional Proposal.

III. Panel Response to Congressional Questions on Sea Grant Re-authorization.

This meeting will be open to the public.

Dated: April 15, 2008.

Mark E. Brown,

Chief Financial Officer, Office of Oceanic and Atmospheric Research.

[FR Doc. E8–8556 Filed 4–18–08; 8:45 am]

BILLING CODE 3510–KA–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, May 16, 2008.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 08–1158 Filed 4–16–08; 4:02 pm]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2 p.m., Wednesday, May 21, 2008.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 08–1159 Filed 4–16–08; 4:02 pm]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, May 30, 2008.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 08–1160 Filed 4–16–08; 4:02 pm]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Wednesday, May 7, 2008.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Risk Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 08–1161 Filed 4–16–08; 4:02 pm]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, May 2, 2008.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 08–1162 Filed 4–16–08; 4:02 pm]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, May 9, 2008.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Secretary of the Commission. Sauntia S. Warfield, 202–418–5084.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 08–1163 Filed 4–16–08; 4:02 pm]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 1 p.m., Monday, May 19, 2008.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule Enforcement Review.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 08–1164 Filed 4–16–08; 4:02 pm]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, May 23, 2008.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 08–1165 Filed 4–16–08; 4:02 pm]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Base Closure and Realignment

AGENCY: Department of Defense, Office of Economic Adjustment.

ACTION: Notice.

SUMMARY: This Notice is provided pursuant to section 2905(b)(7)(B)(ii) of the Defense Base Closure and Realignment Act of 1990. It provides a partial list of military installations closing or realigning pursuant to the 2005 Defense Base Closure and Realignment (BRAC) Report. It also provides a corresponding listing of the Local Redevelopment Authorities (LRAs) recognized by the Secretary of Defense, acting through the Department of Defense Office of Economic Adjustment (OEA), as well as the points of contact, addresses, and telephone numbers for the LRAs for those installations. Representatives of state and local governments, homeless providers, and other parties interested in the redevelopment of an installation should contact the person or organization listed. The following information will also be published simultaneously in a newspaper of general circulation in the area of each installation. There will be additional Notices providing this same information about LRAs for other closing or realigning installations where surplus government property is available as those LRAs are recognized by the OEA.

EFFECTIVE DATE: April 21, 2008.

FOR FURTHER INFORMATION CONTACT: Director, Office of Economic Adjustment, Office of the Secretary of Defense, 400 Army Navy Drive, Suite 200, Arlington, VA 22202–4704, (703) 604–6020.

Local Redevelopment Authorities (LRAs) for Closing and Realigning Military Installations

Pennsylvania

Installation Name: 1st LT Ray S. Musselman Memorial U.S. Army Reserve Center.

LRA Name: Musselman Memorial Army Reserve Center Local Redevelopment Authority.

Point of Contact: Steven Nelson, Director of Policy, Montgomery County.

Address: County of Montgomery Court House, P.O. Box 311, Norristown, PA 19404–0311.

Phone: (610) 278–1462.

Washington

Installation Name: MAJ David P. Oswald U.S. Army Reserve Center.

LRA Name: City of Everett.

Point of Contact: Allan Giffen, Planning Director, Planning and Community Development, City of Everett.

Address: 2930 Wetmore Avenue, Suite 8–A, Everett, WA 98201.

Phone: (425) 257–8731.

Dated: April 8, 2008

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E8–8591 Filed 4–18–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

U.S. Strategic Command Strategic Advisory Group Closed Meeting

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C. App 2, Section 1), the Sunshine in the Government Act of 1976 (5 U.S.C. 552b), and 41 CFR 102–3.150, the Department of Defense announces the following closed meeting notice pertaining to the U.S. Strategic Command Strategic Advisory Group.

DATES: May 14, 2008 (8 a.m. to 5 p.m.) and May 15, 2008 (8 a.m. to 11:30 a.m.).

ADDRESSES: Dougherty Conference Center, Building 432, 906 SAC Boulevard, Offutt AFB, Nebraska 68113.

FOR FURTHER INFORMATION CONTACT: Ms. Constance Druskis, Designated Federal Officer, (402) 294–4102, 901 SAC Blvd, Suite 1F7, Offutt AFB, NE 68113–6030. For supplementary information contact: Mr. Floyd March, Joint Staff, (703) 697–0610.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: The purpose of the meeting is to provide advice on scientific, technical, intelligence, and policy-related issues to the Commander, U.S. Strategic Command, during the development of the Nation's strategic war plans.

Agenda: Topics include: Policy Issues, Space Operations, Nuclear Weapons Stockpile Assessment, Weapons of Mass Destruction, Intelligence Operations, Cyber Operations, Global Strike, Command and Control, Science and Technology, Missile Defense.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b, and 41 CFR 102–3.155, the Department of Defense has determined that the meeting shall be closed to the public. Per delegated authority by the Chairman, Joint Chiefs of Staff, General Kevin P. Chilton, Commander, U.S. Strategic Command, in consultation with his legal advisor, has determined in writing that the public interest requires that all sessions of this meeting be closed to the public because they will be concerned with matters listed in Section 552b(c)(1) of Title 5, U.S.C.

Written Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public of interested organizations may submit written statements to the membership of the Strategic Advisory Group at any time or in response to the stated agenda of a planned meeting. Written statements should be submitted to the Strategic Advisory Group's Designated Federal Officer; the Designated Federal Officer's contact information can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.* Written statements that do not pertain to a scheduled meeting of the Strategic Advisory Group may be submitted at any time. However, if individual comments pertain to a specific topic being discussed at a planned meeting, then these statements must be submitted no later than five business days prior to the meeting in question. The Designated Federal Officer will review all submitted written statements and provide copies to all the committee members.

Dated: April 11, 2008.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E8–8378 Filed 4–17–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for a Proposed Special Area Management Plan for the Otay River Watershed, San Diego County, CA

AGENCY: U.S. Army Corps of Engineers, (DoD).

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers (Corps of Engineers) is announcing its intent to prepare a Draft Environmental Impact Statement (DEIS) for a Special Area Management Plan (SAMP). The SAMP is being developed to address potential effects of anticipated development, infrastructure, and maintenance projects on aquatic resources in the Otay River Watershed (SAMP study area). The DEIS will assess the impacts of various land development and aquatic resource protection alternatives as set forth below and further identified during the preparation of the SAMP. It is anticipated that the DEIS will be utilized by the local agencies in lieu of an Environmental Impact Report (EIR) pursuant to the California Environmental Quality Act (CEQA).

The SAMP will provide a comprehensive plan for protecting and enhancing aquatic resources while providing for the permitting of reasonable economic development and public infrastructure, consistent with the goals and objectives of local land use plans and with the regional Multiple Species Conservation Plan (MSCP) for southwestern San Diego County developed by local governments in collaboration with the U.S. Fish and Wildlife Service and California Department of Fish and Game. The SAMP will provide a framework for a long-term program-level permitting process for projects in the watershed subject to the Corps of Engineers' permit authority under Section 404 of the Clean Water Act (CWA). Section 404 of the CWA regulates the discharge of dredged or fill material into waters of the United States, including wetlands. The SAMP may also be utilized by other agencies in the administration of their regulatory programs, including the California Department of Fish and Game (i.e., Section 1600 *et seq.* of the Fish and Game Code) and the Regional Water Quality Control Board (i.e., Section 401 of the CWA).

In addition, the SAMP will include a comprehensive program involving conservation, restoration, and management of aquatic resources within the study area.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DEIS can be answered by: Ms. Laurie Monarres, Otay River SAMP Project Manager, (858) 674–5384, *laurie.a.monarres@usace.army.mil,* Regulatory Division (CESPL-RG), U.S. Army Corps of Engineers, Los Angeles District, San Diego Field Office, 16885 West Bernardo Drive, Suite 300A.

SUPPLEMENTARY INFORMATION: 1. *Proposed Action:* The Corps of Engineers utilizes Special Area Management Plans to assist in long-term planning for regulatory actions under Section 404 of the CWA that involve large areas, complex projects, and sensitive aquatic resources. The subject SAMP study area consists of the Otay River Watershed in southwestern San Diego County.

The SAMP will describe an approach and a set of actions to preserve, enhance, and restore aquatic resources, while allowing reasonable economic development and construction and maintenance of public infrastructure facilities within the study area. Key objectives of the SAMP for the Otay River Watershed are to: (1) Evaluate the extent and condition of existing aquatic resources; (2) develop a comprehensive reserve program for the protection, enhancement, restoration and management of aquatic resources; and (3) identify and evaluate alternative land development scenarios in the context of the aquatic resource reserve program. Based on the SAMP, the Corps of Engineers will identify potential areas and/or activities suitable for authorization using abbreviated, program-level permitting procedures under Section 404 of the CWA. Activities that may be authorized using

such program-level permitting procedures include, but are not limited to, the construction of public and private infrastructure, such as roads, flood control projects and utilities; operation and maintenance of public and private facilities; residential, commercial, industrial, and recreational development; and restoration, enhancement, and creation of aquatic resources. The Corps of Engineers will jointly develop the SAMP with other public agencies, including the County of San Diego and the Cities of Chula Vista, and Imperial Beach. In addition, the Corps of Engineers and County of San Diego will coordinate with the U.S. Fish and Wildlife Service, the U.S. Environmental Protection Agency, the California Department of Fish and Game, and the California Regional Water Quality Control Boards as appropriate. The Corps of Engineers encourages active participation by affected interests, including landowners and the general public.

The County of San Diego and the cities of Chula Vista, and Imperial Beach will seek a Master Streambed Alteration Agreement (MSAA) under section 1600 *et seq.* of the California Fish and Game Code for activities in the SAMP study area that affect lakes, rivers, streams, and associated riparian habitats subject to the Department's jurisdiction. The documentation necessary to support a MSAA will be developed in close coordination with the California Department of Fish and Game.

The environmental review of the SAMP/MSAA will be conducted through an EIS. The County of San Diego will serve as the lead agency for the purpose of environmental review pursuant to the California Environmental Quality Act (CEQA) for the actions described in the SAMP/MSAA. The Corps of Engineers and the County of San Diego will work cooperatively to prepare the EIS document, and to coordinate the public notice and hearing processes under federal and state law.

2. *Alternatives:* Alternatives that may be considered include the following two categories:

I. No-SAMP alternatives (also called No-Action alternatives):

(a) No Action (No SAMP). This alternative contemplates that no SAMP would be developed and that permitting under Section 404 of the CWA would proceed on a project-by-project basis. Under the alternative, each individual project would be required to obtain, as needed, permits from the Army Corps of Engineers.

(b) No Federal Action/No Impacts to Waters of the U.S. (Full Realization of General Plans). This alternative would require avoidance of impacts to waters of the United States, eliminating the need for the issuance of Corps permits. To support the level of development contemplated by local general plans, this alternative could involve changes to existing specific plans and other land use documents to accommodate higher density development and new infrastructure.

(c) No Federal Action/No Impacts to Waters of the U.S. (Partial Realization of General Plans). This alternative would require avoidance of impacts to waters of the United States and eliminate the need for the issuance of Corps permits. Under this alternative, build-out of the elements of local government general plans affecting the Otay River Watershed would be reduced by a level commensurate with the avoidance of areas containing jurisdictional resources.

II. SAMP alternatives:

(a) Existing General Plans/MSCP. This alternative reflects land uses designated in current general plans and other adopted plans. Land uses would proceed as currently anticipated in the participating local governments' existing land use plans and would require permits under Section 404 in some cases. Conserved aquatic resources would be limited to preserve areas identified by the MSCP.

(b) Updated General Plans/MSCP. Under this alternative, the likely changes in land use type and location that would occur under the revised General Plans for the City and County of San Diego would be analyzed. Conserved aquatic resources would be limited to preserve areas identified by the MSCP.

(c) Maximum Open Space/Minimal Development. One or more alternatives would analyze land use scenarios that would result in greater set asides of open space and lower levels of development than currently anticipated for the watershed. The alternative(s) may, for instance, consider the elimination of certain specific plans and other high-density development projects to reduce the impacts of development and gain additional open space in the watershed.

(d) Maximum Development/Minimal Open Space. One or more alternatives would analyze land use scenarios that would result in higher levels of development and lower levels of open space. The alternative(s) may consider high intensity development in areas otherwise zoned for open space, agriculture, or low density development.

(e) Subbasin Development/Open Space Scenarios. One or more alternatives would analyze land use scenarios on a subbasin-by-subbasin basis with the goal of protecting subbasin and watershed riparian ecosystem integrity in terms of hydrology, water quality, and habitat. Land uses currently anticipated in each subbasin may be modified or relocated to determine the environmental impact of different land use configurations. The alternatives would reflect land use scenarios that would likely have differing effects on the riparian ecosystem integrity of the watershed.

(f) Protection of High Integrity Areas (Function-Based Approach). One or more alternatives would focus on maximizing the protection/preservation of areas with high functional integrity with respect to aquatic resource hydrology, water quality, and habitat. The alternative(s) would eliminate certain land uses based on their effects on high integrity resources.

(g) Avoidance of Jurisdictional Wetlands. Under this alternative, impacts to wetlands under the jurisdiction of the Corps would be avoided. However, the alternative would contemplate some level of impact to non-wetland jurisdictional waters, such as ephemeral and intermittent streams.

(h) Updated General Plans/MSCP/Subbasin Functional Assessment Criteria. This alternative contemplates that land uses would proceed consistent with general plan updates as likely to be adopted by the applicable jurisdiction. Under this alternative, the likely changes in land use type and location that would occur under the revised General Plans for the City and County of San Diego would be analyzed. In addition, the alternative would recognize the preserve system designated under the MSCP; however, additional areas could be set aside for the protection, enhancement, and restoration of aquatic resources. These additional areas would be identified based on the goal of achieving certain ecological integrity targets and other physical and biological considerations.

3. *Scoping Process:* The Corps' scoping process for the DEIS will involve soliciting written comments and a public meeting. Potentially significant issues to be analyzed in the DEIS include aquatic resources, surface water quality, threatened and endangered species, cultural resources, cumulative, and growth inducing impacts.

4. In order for the EIS to be utilized by the state and local agencies to satisfy

the requirements of CEQA, the EIS will include a separate discussion of feasible mitigation measures for each significant impact.

5. Other environmental review, consultation requirements, or considerations include compliance with section 106 of the National Historic Preservation Act and section 7 of the Endangered Species Act.

Public Scoping

A public scoping meeting to receive input on the scope of the DEIS will be conducted on April 29, 2008 from 7 p.m.–9 p.m. at the City of Chula Vista Department of Public Works Building located at 1800 Maxwell Road, Chula Vista, CA 91911. This meeting will address both the SAMP and the MSAA. The public scoping will be conducted in an open-house format.

Comments on the scope of the DEIS will be accepted from the public until June 18, 2008.

Schedule

The estimated date the DEIS will be made available to the public is December 2009.

Dated: April 14, 2008.

Mark Durham,

Chief, South Coast Branch, Regulatory Division.

[FR Doc. E8–8523 Filed 4–18–08; 8:45 am]

BILLING CODE 3710–KF–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 May 21, 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: April 15, 2008.

Angela C. Arrington,

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

Office of Vocational and Adult Education

Type of Review: Extension.

Title: Guide for the Development of a State Plan under the Adult Education and Family Literacy Act (Title II of the Workforce Investment Act of 1998).

Frequency: Annually.

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

Reporting and Recordkeeping Hour Burden:

Responses: 59.

*Burden Hours:*2,655.

Abstract: The Adult Education and Family Literacy Act (AEFLA), Title II of the Workforce Investment Act of 1998 (WIA), Public Law 105–220 provides formula funding to States to support adult education instruction at the State level. Section 224 of PL 105–220 required States submit to the Department their plan for how they address the requirements of the Act, including agreeing upon levels of performance identified in section 212. Congress did not enact new legislation prior to the expiration of the law in 2003; however, they continue to extend program appropriations for each additional year in annual appropriation laws, respectively.

While it is unlikely that Congress will reauthorize the expired Workforce Investment Act of 1998 (WIA) this year, appropriations for FY 2008 were signed into law by the President on December 27, 2007. This Guide will continue to, as it has since the expiration of WIA, advise States on how to continue their Adult Education programs.

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 3591. 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., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. 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. E8–8557 Filed 4–18–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education; Overview Information; Jacob K. Javits Gifted and Talented Students Education Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2008

(Catalog of Federal Domestic Assistance (CFDA) Number: 84.206A.)

DATES: *Applications Available:* April 21, 2008.

Deadline for Transmittal of Applications: June 5, 2008.

Deadline for Intergovernmental Review: August 4, 2008.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Jacob K. Javits Gifted and Talented Students Education Program is to carry out a coordinated program of scientifically based research,

demonstration projects, innovative strategies, and similar activities designed to build and enhance the ability of elementary and secondary schools nationwide to meet the special educational needs of gifted and talented students.

Priority: This priority is from the notice of final priority for this program, published elsewhere in this issue of the **Federal Register**.

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: *Javits Demonstration Programs.*

Program Authority: 20 U.S.C. 7253 *et seq.*

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99. (b) The notice of final priority, published elsewhere in this issue of the **Federal Register**.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $2,646,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2009 from the list of unfunded applicants from this competition.

Estimated Range of Awards: $300,000–$450,000.

Estimated Average Size of Awards: $441,000.

Estimated Number of Awards: 6.

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

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* State educational agencies, local educational agencies (LEAs), institutions of higher education, other public agencies, and private agencies and organizations, including Indian tribes and Indian organizations as defined by the Indian Self-Determination and Education Assistance Act, and Native Hawaiian organizations.

Note: Participation of Private School Children and Teachers

LEAs or other entities applying for the Jacob K. Javits Gifted and Talented Students Education Program must provide for the equitable participation of private school children and teachers in private nonprofit elementary and secondary schools, including the participation of teachers and other personnel in professional development programs serving such students, located in areas served by the grant recipient. In order to ensure that grant program activities address the needs of private school children, teachers, and other educational personnel, the LEA or other entity 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 would affect the opportunities of eligible private school children, teachers, and other educational personnel to participate in the Jacob K. Javits Gifted and Talented Students Education Program.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address To Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet use the following addresses: *http://www.grants.gov* or *http://www.ed.gov/programs/javits/applicant.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: *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 84.206A.

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 20 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, except titles, headings, footnotes, quotations, references, captions, and all text in charts, tables, and graphs.
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).
- Begin numbering at the right bottom of the first page in Arabic numerals (''1'') and number the pages consecutively throughout the document.
- Include all critical information in the program narrative.

The page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the page limit does apply to all of the application narrative section.

We will reject your application if you exceed the page limit; or if you apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: April 21, 2008.

Deadline for Transmittal of Applications: June 5, 2008.

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

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

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION**

CONTACT 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: August 4, 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:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section in this notice.

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

a. *Electronic Submission of Applications.*

Applications for grants under the Jacob K. Javits Gifted and Talented Students Education Program, CFDA Number 84.206A, must be submitted electronically using the Governmentwide Grants.gov Apply site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

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

You may access the electronic grant application for the Jacob K. Javits Gifted and Talented Students Education 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 84.206, not 84.206A).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this program to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*
- To submit your application via Grants.gov, you must complete all steps in the Grants.gov registration process (see *http://www.grants.gov/applicants/get_registered.jsp*). These steps include (1) Registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*). You also must provide on your application the same D-U-N-S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov. In addition you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—have replaced the ED 424 (Application for Federal Education Assistance).
- You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified 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.

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

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Grants.gov system; and
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

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

Address and mail or fax your statement to: Teresa Cahalan, U.S. Department of Education, 400 Maryland Avenue, SW., room 5W218, Washington, DC 20202–8243. FAX: (202) 401–0220.

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

b. *Submission of Paper Applications by Mail.*

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

By mail through the U.S. Postal Service:
U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.206A), 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 84.206A), 7100 Old Landover Road, Landover, MD 20785–1506.

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

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

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

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

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

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

(1) A private metered postmark.

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

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

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

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.206A), 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 following selection criteria for this competition are from 34 CFR 75.210 of EDGAR and are listed in the application package. The maximum score for all selection criteria is 100 points. The points or weights assigned to each criterion are indicated in parentheses.

(a) Need for the Project (10)

In determining the need for the proposed project, we will consider the extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.

(b) Quality of the Project Design (25)

In determining the quality of the design of the proposed project, we will consider the extent to which—

(1) The goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable;

(2) The design of the proposed project is appropriate to, and will successfully address, the needs of the target

population or other identified needs; and

(3) The proposed project represents an exceptional approach for meeting statutory purposes and requirements.

(c) Quality of the Project Personnel (15)

In determining the quality of project personnel, we will consider the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. We will also consider the following—

(1) The qualifications, including relevant training and experience, of the project director or principal investigator; and

(2) The qualifications, including relevant training and experience, of key project personnel.

(d) Quality of the Management Plan (20)

In determining the quality of the management plan for the proposed project, we will consider the adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(e) Quality of the Project Evaluation (30)

In determining the quality of the project evaluation, we will consider the extent to which—

(1) The methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project; and

(2) The evaluation will provide guidance about effective strategies suitable for replication or testing in other settings.

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:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html*.

4. *Performance Measures:* Pursuant to the Government Performance and Results Act of 1993 (GPRA), the Department developed the following three measures for evaluating the overall effectiveness of projects funded under this competition: (1) The quality of project designs, based on an expert panel review; (2) significant gains in academic achievement among target student populations, based on an expert panel review; and (3) the quality of project designs for effective professional development, based on expert panel review. As part of their interim and final performance reports, grantees will be expected to submit data to the Department as needed to assess progress using these measures. Projects that do not include a professional development component will not be assessed through the GPRA measure in (3) in this section.

VII. Agency Contact

For Further Information Contact: Teresa Cahalan, U.S. Department of Education, 400 Maryland Avenue, SW., room 5W218, Washington, DC 20202–8343. Telephone: (202) 401–3947 or by e-mail: *jacobk.javits@ed.gov*.

If you use a TDD, call the Federal Relay Service (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 may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/news/fedregister*.

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

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

Dated: April 16, 2008.

Kerri L. Briggs,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. E8–8588 Filed 4–18–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Jacob K. Javits Gifted and Talented Students Education Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice of final priority.

SUMMARY: The Assistant Secretary for Elementary and Secondary Education announces a priority under the Jacob K. Javits Gifted and Talented Students Education Program. The Assistant Secretary will use this priority for competitions in fiscal year (FY) 2008 and later years.

We take this action to support the implementation of models with demonstrated effectiveness in identifying and serving gifted and talented students (including economically disadvantaged individuals, individuals with limited English proficiency, and individuals with disabilities) who may not be identified and served through typical strategies for identifying gifted and talented children. We intend the priority to increase the availability of proven models for increasing the number of students from underrepresented groups participating in gifted and talented education programs.

EFFECTIVE DATE: This priority is effective April 21, 2008.

FOR FURTHER INFORMATION CONTACT: Teresa Cahalan, U.S. Department of Education, 400 Maryland Avenue, SW., room 5W218, Washington, DC 20202–8243. Telephone: (202) 401–3947 or via Internet: *jacobk.javits@ed.gov*.

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

Individuals with disabilities can obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:

General

The purpose of the Jacob K. Javits Gifted and Talented Students Education Program is to carry out a coordinated program of scientifically based research, demonstration projects, innovative strategies, and similar activities designed to build and enhance the ability of elementary schools and secondary schools nationwide to meet the special educational needs of gifted and talented students.

Pursuant to section 9101(22) of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001 (ESEA), for purposes of the Jacob K. Javits Gifted and Talented Students Education Program, gifted and talented students are students who give evidence of high achievement capability in areas such as intellectual, creative, artistic, or leadership capacity, or in specific academic fields, and who need services or activities not ordinarily provided by the school in order to fully develop those capabilities.

Under the statutory authority for the Jacob K. Javits Gifted and Talented Students Education Program, section 5465(b) of ESEA requires that no less than 50 percent of the applications approved in each fiscal year address the general priority described in section 5465(a)(2) of ESEA. This general priority focuses on assisting schools in the identification of, and provision of services to, gifted and talented students (including economically disadvantaged individuals, individuals with limited English proficiency, and individuals with disabilities) who may not be identified and served through traditional assessment methods (see 20 U.S.C. 7253d).

We published a notice of proposed priority for this program in the **Federal Register** on January 14, 2008 (73 FR 2228). Pages 2229 through 2230 of this notice included a discussion of the significant issues pertaining to the proposed priority.

Analysis of Comments and Changes

In response to our invitation in the notice of proposed priority, 44 parties submitted comments on the proposed priority. An analysis of the comments and of any changes in the priority since publication of the notice of proposed priority follows.

Generally, we do not address technical and other minor changes—and suggested changes the law does not authorize us to make under the applicable statutory authority.

Comment: Several commenters recommended that we clarify whether the priority applies to capacity-building grants authorized under section 5464(c) of ESEA.

Discussion: This priority implements the second general priority established in section 5465(a)(2) of ESEA and applies only to competitions for which we invite applications pursuant to that authority. This priority does not apply to, and this year we are not announcing, a competition under section 5464(c) or 5465(a)(1) of the Act.

Change: None.

Comment: Numerous commenters expressed concern that references in the proposed priority to raising achievement levels suggested that the Department intended to circumvent the statutory intent of ESEA by diverting Jacob K. Javits Gifted and Talented Students Education Program funds from services for gifted and talented students to services for students who are not gifted and talented. These commenters expressed concern that under this priority program funds would be used in a manner that is contrary to the intent of ESEA, to enhance the academic achievement of all students instead of just gifted and talented students. Some of these commenters requested that the priority be modified to demonstrate that the intent of the priority is to implement section 5462 of ESEA by enhancing the ability of elementary and secondary schools to meet the special education needs of gifted and talented students.

Discussion: The priority is intended to identify and serve gifted and talented students. The priority is intended to implement the statutory service priority in section 5465(b) of ESEA that requires that no less than 50 percent of the applications approved under 5464(a)(2) of ESEA in a fiscal year be used to assist schools in the identification of, and provision of services to, gifted and talented students from underrepresented groups who may not be identified and served through traditional assessment methods. Funds awarded under this priority are intended to serve the needs of gifted and talented students from underrepresented groups. We note, however, that under section 5463 of ESEA, a grantee can serve gifted and talented students simultaneously with students who have similar educational needs but who are not gifted and talented, in the same educational settings, as appropriate. Thus, students who are not gifted and talented may benefit from projects funded under this competition.

Changes: We have revised the priority to clarify that projects supported through this competition must focus on identifying and educating gifted and talented students from underrepresented groups, by: (1) Revising our definition of the term ''scaling up'' to indicate that we mean selecting a model designed to increase the number of gifted and talented students from underrepresented groups who, through gifted and talented education programs, perform at high levels of academic achievement that has demonstrated effectiveness on a small scale and expanding the model for use with gifted and talented students in broader settings or with broader populations of gifted and talented students; (2) indicating in paragraph (2) of the priority that the model selected must be shown to have resulted in both the identification of, and the provision of services to, increased numbers of gifted and talented students from underrepresented groups who participate in gifted and talented programs; and (3) adding the words ''gifted and talented'' to modify the word ''students'' in several additional places throughout the priority, where we had not already done so.

Comment: A few commenters expressed concern that the priority violated the intent of Congress as expressed in the Jacob K. Javits Gifted and Talented Students Education Act of 2001 by targeting programs aimed at what one commenter referred to as ''low-performing'' students rather than encouraging the development of models and strategies appropriate for teaching gifted and talented students. The commenters requested that we reissue the priority to align it with the statutory purpose and the intent of Congress to target programs that serve primarily students identified as gifted and talented, or that we clarify that the priority is not intended to lower the bar for gifted and talented students.

Discussion: As discussed in response to the previous comment, this priority is intended to identify and serve gifted and talented students. The focus of this priority is on the identification of, and provision of services to, gifted and talented students (including economically disadvantaged individuals, individuals with limited English proficiency, and individuals

with disabilities) who may not be identified and served through traditional assessment methods. The priority is designed to ensure that all gifted and talented students are identified and served.

Change: We have revised the priority to clarify that projects supported through this competition must focus on the identification of, and provision of service to, gifted and talented students from underrepresented groups.

Comment: One commenter expressed concern that under the priority, Jacob K. Javits Gifted and Talented Students Education Program funds would be used to provide what the commenter referred to as outreach to disadvantaged students. The commenter expressed the view that other Federal financial assistance was already available to address the needs of low achieving, underachieving, and disadvantaged students and that projects funded under the Jacob K. Javits Gifted and Talented Students Education Program authority should serve only gifted and talented students.

Discussion: Funds under this priority must be used to identify and serve gifted and talented students from underrepresented groups, which could include students who are economically disadvantaged. To the extent that the commenter would consider this activity outreach, it is authorized under the general priority established in section 5465(a)(2) of ESEA, which we are implementing through this priority.

Change: None.

Comment: Several commenters recommended that we clarify the meaning of the terms ''broader settings'' and ''different populations'' as they pertain to the requirement in the priority that applicants propose to scale up a model that has demonstrated effectiveness on a small scale.

Discussion: We agree with the commenters that it would be beneficial to clarify the terms ''broader settings'' and ''different populations'' in the priority.

Change: We have revised the priority by adding examples of ''broader settings'' and ''different populations'' for clarification. To clarify that the term ''broader settings'' refers to the places where models can be implemented, we have listed the following examples of ''broader settings'': Multiple schools or multiple grade levels. To clarify that the term ''different populations'' refers to groupings of students based on common characteristics, we have provided specific examples of ''different populations'' in the priority. These examples show that projects might test whether findings can be replicated across groups of students with different socioeconomic, racial, ethnic, and linguistic backgrounds.

Comment: Several commenters asked whether eligibility for a grant under this priority is restricted to applicants that demonstrate that they intend to both identify and serve gifted and talented students.

Discussion: Section 5465(a)(2) requires that projects under this priority assist schools in both the identification of, and provision of services to, gifted and talented students. Thus, eligibility for a grant under this priority is restricted to applicants that demonstrate that they intend both to identify and serve gifted and talented students.

Change: We have revised the priority to make it clear that projects are required both to identify gifted and talented students and to provide these students with gifted and talented education services. Specifically, in paragraphs (2) and (5) of the priority, we have added references both to the identification of, and to the provision of services to, gifted and talented students.

Comment: Several commenters requested clarification of the language in paragraph (5) of the priority, in which we refer to students prepared to participate in gifted and talented education programs. The commenters requested that the Department clarify whether, in addressing this element of the priority, an applicant must demonstrate the presence of an established gifted and talented program.

Discussion: We have revised paragraph (5) of the priority in response to a previous comment. Specifically, we deleted the language the commenters referenced regarding students prepared to participate in gifted and talented education programs and revised the priority to clarify that applicants must demonstrate how they will provide gifted and talented education services to the students identified through the project. To the extent that applicants are required to use models with demonstrated effectiveness in the identification of, and provision of services to, gifted and talented students from underrepresented groups, these models must include established gifted and talented education programs.

Changes: As stated previously in this notice, we have revised the priority to make it clear that projects are required both to identify gifted and talented students and to provide these students with gifted and talented education services. Specifically, in paragraphs (2) and (5) of the priority, we have added references both to the identification of, and to the provision of services to, gifted and talented students.

Comment: One commenter recommended that we place greater emphasis on the applicant's expertise in gifted education, either by requiring that applicants demonstrate that they have significant expertise in this area, or by adding a competitive preference for applicants that include a team leader with gifted education expertise.

Discussion: Paragraph (3) of the priority already requires applicants to demonstrate that their leadership team has significant expertise in gifted and talented education. However, we agree with the commenter that highlighting the need for expertise in gifted and talented education may be helpful.

Change: We have revised the order of the areas of required expertise listed in paragraph (3) of the priority to place greater emphasis on the need for expertise in gifted and talented education.

Comment: One commenter recommended that, in order to expand the advocacy infrastructure for this program, we fund demonstration projects in States that do not house the National Research and Development Center.

Discussion: Although we recognize the importance of supporting demonstration projects that address the diverse needs of the different student populations and geographic areas served by gifted and talented education programs, the Department relies upon the advice of experts in our peer review panels to select the proposals that are of highest quality from among those we receive, regardless of the State in which the applicant resides.

Change: None.

Comment: None.

Discussion: Upon further review of this priority, we noticed that we refer to models and interventions and in most instances we mean the same thing. For the sake of clarity, we have revised the priority to refer to ''models'' throughout. By ''models,'' we mean instructional approaches, practices, or curricula.

Changes: We have replaced references to the term ''intervention'' with the term ''model.''

Note: This notice does *not* solicit applications. In any year in which we choose to use this priority, we invite applications through a notice in the **Federal Register**. When inviting applications we designate the priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority

we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the competitive priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the invitational priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Priority

Javits Demonstration Programs

Under this priority, grantees must ''scale up'' and evaluate models designed to increase the number of gifted and talented students from underrepresented groups who, through gifted and talented education programs, perform at high levels of academic achievement.

For this priority, ''scaling up'' means selecting a model designed to increase the number of gifted and talented students from underrepresented groups who, through gifted and talented education programs, perform at high levels of academic achievement that has demonstrated effectiveness on a small scale and expanding the model for use with gifted and talented students in broader settings (such as in multiple schools, grade levels, or districts, or in other educational settings) or with different populations of gifted and talented students (i.e., different populations of these students based on differences such as the socioeconomic, racial, ethnic, geographic, and linguistic backgrounds of the students and their families). With regard to this priority, the term ''underrepresented groups'' includes economically disadvantaged individuals, individuals with limited English proficiency, and individuals with disabilities.

To meet this priority, applicants must include all of the following in their applications:

(1) Evidence from one or more scientifically based research and evaluation studies indicating that the proposed model has raised the achievement of gifted and talented students from one or more underrepresented groups in one or more core subject areas.

(2) Evidence from one or more scientifically based research and evaluation studies that the proposed model has resulted in the identification of and provision of services to increased numbers of gifted and talented students from underrepresented groups who participate in gifted and talented education programs.

(3) Evidence that the applicant has significant expertise on its leadership team in each of the following areas: Gifted and talented education, research and program evaluation, content knowledge in one or more core academic subject areas, and working with underrepresented groups.

(4) A sound plan for implementing the model in multiple settings or with multiple populations.

(5) A research and evaluation plan that employs an experimental or quasi-experimental design to measure the impact of the model on the achievement of students in underrepresented groups, including students who are economically disadvantaged or limited English proficient, or who have disabilities, and on the number of these students who are identified as gifted and talented and served through gifted and talented programs.

Note: Evaluation methods using an experimental design are best for determining program effectiveness. Thus, when feasible, the project must use an experimental design under which participants (e.g., students, teachers, classrooms, or schools) are randomly assigned to participate in the project activities being evaluated or to a control group that does not participate in the project activities being evaluated.

If random assignment is not feasible, the project may use a quasi-experimental design with carefully matched comparison conditions. This alternative design attempts to approximate a randomly assigned control group by matching participants with non-participants that have similar characteristics before the model is implemented.

Executive Order 12866

This notice of final priority has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the notice of final priority are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of final priority, we have determined that the benefits of the final priority justify the costs.

We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

We summarized the costs and benefits in the notice of proposed priority.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Electronic Access to This Document

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

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

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

(Catalog of Federal Domestic Assistance Number 84.206A Jacob K. Javits Gifted and Talented Students Education Program)

Program Authority: 20 U.S.C. 7253.

Dated: April 16, 2008.

Kerri L. Briggs,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. E8–8589 Filed 4–18–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2055–053]

Idaho Power Company; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

April 14, 2008.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of License to Remove a Portion of the Project's Transmission Line.

b. *Project No.:* 2055–053.

c. *Date Filed:* March 10, 2008.

d. *Applicant:* Idaho Power Company.

e. *Name of Project:* C.J. Strike Hydroelectric Project.

f. *Location:* On the Snake and Bruneau rivers, in Owyhee and Elmore counties, Idaho. The project occupies federal lands managed by the U.S. Bureau of Land Management (BLM).

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Tom R. Saldin, Senior Vice President and General Counsel, and Nathan F. Gardiner Attorney, Idaho Power Company, 1221 West Idaho Street, P.O. Box 70, Boise, Idaho 83707, *ngardiner@idahopower.com,* telephone: (208) 388–2975, fax (208) 388–6935.

i. *FERC Contact:* Mrs. Anumzziatta Purchiaroni, Telephone (202) 502–6191, and e-mail address: *anumzziatta.purchiaroni@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protest:* May 14, 2008.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Request:* The licensee indicates in the filing that, the portion of the 13-kV Strike-Mt. Home Line between Mountain Home and the point where the Danskin Power Plant connects to the Strike-Mt. Home Line is now part of a distribution system and no longer considered part of the project's primary transmission line. Therefore, the licensee is requesting an amendment to remove from the license that portion of the project's transmission line. The filing includes a right-of-way grant from the BLM for the segments of the line that cross federal lands.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. Information about this filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions To Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers.

p. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–8501 Filed 4–18–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos.: 12540–002, 12545–002, 12548–002]

Hydrodynamics, Inc.; Notice of Applications Tendered for Filing With the Commission and Soliciting Additional Study Requests

April 14, 2008.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection.

a. *Type of Application:* Minor unconstructed projects.

b. *Project No.:* 12540–002, 12545–002, and 12548–002.

c. *Date filed:* March 31, 2008.

d. *Applicant:* Hydrodynamics, Inc.

e. *Names of Projects:* Woods, Johnson, and Greenfield.

f. *Location:* On the Greenfield Main Canal and the Greenfield South Canal, parts of the Bureau of Reclamation's Sun River Irrigation Project, in Cascade and Teton Counties, Montana, near Fairfield, Montana.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Roger Kirk, Hydrodynamics, Inc., POB 1136, Bozeman, MT 59771, (406) 587–5086.

i. *FERC Contact:* Dianne Rodman, (202) 502–6077, *dianne.rodman@ferc.gov.*

j. *Cooperating Agencies:* We are asking Federal, State, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing

comments described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See*, 94 FERC 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the applications on their merits, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the applications, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* May 30, 2008.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Additional study requests and requests for cooperating agency status may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

m. The applications are not ready for environmental analysis at this time.

n. The proposed Woods Project would be built at the Greenfield Main Canal's Woods drop structure. The applicant proposes to construct: (1) An inflatable weir spanning the full width of the canal; (2) an intake structure with trash rack and radial gate or stop-log shut off; (3) a buried, 72-inch-diameter, 750-foot-long steel or polyethylene penstock; (4) a powerhouse containing one Francis or propeller (Reaction) turbine and one generator with a rated output of 900 kilowatts (kW); (5) a tailrace about 12.5 feet long, returning flows to the canal; (6) a switchyard; and (7) a 0.1-mile-long, 69-kilovolt (kV) transmission line interconnecting with an existing powerline. Average annual generation would be 2.2 gigawatt hours (GWh).

The proposed Johnson Project would be built at the Greenfield South Canal's Johnson drop structure. The applicant proposes to construct: (1) An inflatable weir spanning the width of the canal; (2) an intake structure with trash rack and radial gate or stop-log shut off; (3) a buried, 60-inch-diameter, 900-foot-long steel or polyethylene penstock; (4) a powerhouse containing one Francis or propeller (Reaction) turbine and one generator with a rated output of 700 kW; (5) a tailrace, returning flows to the canal; (6) a switchyard; (7) a 0.5-mile-long, 69-kV transmission line interconnecting with an existing powerline; and (8) a powerhouse access road. Average annual generation would be 1.7 GWh.

The proposed Greenfield Project would be built at the Greenfield Main Canal's Greenfield drop structure. The applicant proposes to construct: (1) An inflatable weir spanning the width of the canal; (2) an intake structure with trash rack and radial gate or stop-log shut off; (3) a buried, 84-inch-diameter, 650-foot-long steel or polyethylene penstock; (4) a powerhouse containing one Francis or propeller (Reaction) turbine and one generator with a rated output of 600 kW; (5) a tailrace about 7 feet long, returning flows to the canal; (6) a switchyard; and (7) a 0.05-mile-long, 12-kV transmission line interconnecting with an existing powerline. Average annual generation would be 1.5 GWh.

The projects would use flows as they are provided in accordance with the needs of the Greenfield Irrigation District, which operates the canals. The projects would not impound water and would be operated strictly as run-of-river plants.

o. Copies of the applications are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the documents. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. Copies are also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to these or other pending projects. For assistance, contact FERC Online Support.

p. With this notice, we are initiating consultation with the Montana State Historic Preservation Officer (SHPO), as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR at § 800.4.

q. *Procedural Schedule:* The applications will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Issue deficiency letter and request additional information—April 2008.

Issue Scoping Document 1 for comments—May 2008.

Issue Scoping Document 2, if necessary—July 2008.

Issue acceptance letter and notice that applications are ready for environmental analysis—July 2008.

Notice of the availability of the multiple-project EA—December 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–8499 Filed 4–18–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12549–002]

Hydrodynamics, Inc.; Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests

April 14, 2008.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Minor unconstructed project.

b. *Project No.:* 12549–002.

c. *Date Filed:* April 1, 2008.

d. *Applicant:* Hydrodynamics, Inc.

e. *Name of Project:* A-Drop.

f. *Location:* On the Greenfield Main Canal, part of the Bureau of Reclamation's Sun River Irrigation Project, in Teton County, Montana, near Fairfield, Montana.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Roger Kirk, Hydrodynamics, Inc., POB 1136, Bozeman, MT 59771, (406) 587–5086.

i. *FERC Contact:* Dianne Rodman, (202) 502–6077, *dianne.rodman@ferc.gov.*

j. *Cooperating Agencies:* We are asking Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. See, 94 FERC 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if

any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* June 1, 2008.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Additional study requests and requests for cooperating agency status may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

m. The application is not ready for environmental analysis at this time.

n. The proposed A-Drop Project would be built at the Greenfield Main Canal's Greenfield drop structure. The applicant proposes to construct: (1) An inflatable weir spanning the width of the canal; (2) an intake structure with trash rack and radial gate or stop-log shut off; (3) a buried, 96-inch-diameter, 570-foot-long steel or polyethylene penstock; (4) a powerhouse containing one Francis or propeller (Reaction) turbine and one generator with a rated output of 400 kilowatts; (5) a tailrace about 12.5 feet long, returning flows to the canal; (6) a switchyard; (7) a 0.1-mile-long, 12-kilovolt transmission line interconnecting with an existing powerline; and (8) an approximately 570-foot-long powerhouse access road. Average annual generation would be 2.5 gigawatt hours.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. With this notice, we are initiating consultation with the Montana State Historic Preservation Officer (SHPO), as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR at § 800.4.

q. *Procedural schedule:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Issue deficiency letter and request for additional information—April 2008.

Issue Scoping Document 1 for comments—May 2008.

Issue Scoping Document 2, if necessary—July 2008.

Issue acceptance letter and notice that application is ready for environmental analysis—July 2008.

Notice of the availability of the EA—December 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–8500 Filed 4–18–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

April 11, 2008.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP03–36–031.

Applicants: Dauphin Island Gathering Partners.

Description: Dauphin Island Gathering Partners submits Fourth Revised Sheet 10A to FERC Gas Tariff, First Revised Volume 1, to be effective 4/9/08.

Filed Date: 04/08/2008.

Accession Number: 20080409–0028.

Comment Date: 5 p.m. Eastern Time on Monday, April 21, 2008.

Docket Numbers: RP96–272–072.

Applicants: Northern Natural Gas Company.

Description: Northern Natural Gas Company submits 48 Revised Sheet 66A to FERC Gas Tariff, Fifth Revised Volume 1, to be effective on April 11, 2008.

Filed Date: 04/10/2008.

Accession Number: 20080411–0092.

Comment Date: 5 p.m. Eastern Time on Tuesday, April 22, 2008.

Docket Numbers: RP96–312–181.

Applicants: Tennessee Gas Pipeline Company.

Description: Tennessee Gas Pipeline Co submits a revised Exhibit A to the Gas Transportation Agreement pursuant Rate Schedule FT–A with AFG Industries, Inc, to be effective 4/1/08.

Filed Date: 04/07/2008.

Accession Number: 20080408–0009.

Comment Date: 5 p.m. Eastern Time on Monday, April 21, 2008.

Docket Numbers: RP99–518–104.

Applicants: Gas Transmission Northwest Corporation.

Description: Gas Transmission Northwest Corporation submits Fourteenth Revised Sheet 24 et al to FERC Gas Tariff, Third Revised Volume 1–A, to be effective 4/9/08.

Filed Date: 04/08/2008.

Accession Number: 20080409–0029.

Comment Date: 5 p.m. Eastern Time on Monday, April 21, 2008.

Docket Numbers: RP08–311–000.

Applicants: Northwest Pipeline GP.

Description: Northwest Pipeline GP submits First Revised Sheet 9 et al of its FERC Gas Tariff.

Filed Date: 04/07/2008.

Accession Number: 20080408–0099.

Comment Date: 5 p.m. Eastern Time on Monday, April 21, 2008.

Docket Numbers: RP08–312–000.

Applicants: Williston Basin Interstate Pipeline Co.

Description: Williston Basin Interstate Pipeline Company submits Second Revised Volume 1 *et al* to be effective April 10, 2008.

Filed Date: 04/10/2008.

Accession Number: 20080410–0132.

Comment Date: 5 p.m. Eastern Time on Tuesday, April 22, 2008.

Docket Numbers: RP08–313–000.

Applicants: Transwestern Pipeline Company, LLC.

Description: Transwestern Pipeline Co, LLC submits First Revised Sheet 6 et al to FERC Gas Tariff, Third Revised Volume 1, to be effective 4/11/08.

Filed Date: 04/10/2008.

Accession Number: 20080411–0091.

Comment Date: 5 p.m. Eastern Time on Tuesday, April 22, 2008.

Docket Numbers: CP05–357–009.

Applicants: Cheniere Creole Trail Pipeline, L.P.

Description: Cheniere Creole Trail Pipeline, LP submits First Revised Sheet No. 5 to FERC Gas Tariff, Original Volume, proposed to be effective 4/24/08.

Filed Date: April 4, 2008.

Accession Number: 20080410–0036.

Comment Date: 5 p.m. Eastern Time on Monday, April 21, 2008.

Docket Numbers: CP08–119–000.

Applicants: Columbia Gulf Transmission Company.

Description: Columbia Gulf Transmission Company submits their abbreviated application for permission and approval to abandon certain FERC Gas Tariff, Volume 2 Rate Schedules.

Filed Date: April 8, 2008.

Accession Number: 20080410–0035.

Comment Date: 5 p.m. Eastern Time on Monday, April 21, 2008.

Docket Numbers: CP08–124–000.

Applicants: Transcontinental Gas Pipe Line Corporation.

Description: Transcontinental Gas Pipe Line Corporation submits an Application for Order Permitting and Approving Abandonment of Services.

Filed Date: April 9, 2008.

Accession Number: 20080410–0133.

Comment Date: 5 p.m. Eastern Time on Monday, April 21, 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. E8–8462 Filed 4–18–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

April 15, 2008.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP99–480–021.

Applicants: Texas Eastern Transmission LP.

Description: Texas Eastern Transmission, LP submits their request for approval of proposed Original Sheet 119 and Sheets 120–125 of FERC Gas Tariff, Seventh Revised Volume 1.

Filed Date: 04/10/2008.

Accession Number: 20080411–0194.

Comment Date: 5 p.m. Eastern Time on Tuesday, April 22, 2008.

Docket Numbers: RP08–314–000.

Applicants: Northern Natural Gas Company.

Description: Northern Natural Gas Company submits a report of the penalty and daily variance charge revenues for the period 11/1/06 through 10/31/07 that have been credited to shippers.

Filed Date: 04/11/2008.

Accession Number: 20080414–0012.

Comment Date: 5 p.m. Eastern Time on Wednesday, April 23, 2008.

Docket Numbers: RP08–315–000.

Applicants: Williston Basin Interstate Pipeline Co.

Description: Williston Basin Interstate Pipeline Company submits Second Revised Sheet 182A to its FERC Gas Tariff, Second Revised Volume 1, to become effective May 12, 2008.

Filed Date: 04/11/2008.

Accession Number: 20080414–0197.

Comment Date: 5 p.m. Eastern Time on Wednesday, April 23, 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. E8–8534 Filed 4–18–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF07–15–000]

Algonquin Gas Transmission, LLC; Supplemental Notice of Intent To Prepare an Environmental Impact Statement for the Proposed East to West Hubline Expansion Project and Request for Comments on Environmental Issues Related to an Alternative Pipeline Route Under Consideration

April 14, 2008.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) is preparing an environmental impact statement (EIS) that will discuss the environmental impacts that could result from the construction and operation of the East to West HubLine Expansion Project (E2W Project or Project). The E2W Project is proposed by Algonquin Gas Transmission, LLC (Algonquin), which is an indirect wholly owned subsidiary of Spectra Energy Corp. The FERC is the lead federal agency in the preparation of the EIS, and is preparing the EIS to satisfy the requirements of the National Environmental Policy Act (NEPA). The Commission will use the EIS in its decision-making process to determine whether or not to authorize the Project.

Although no formal application has been filed with the FERC, we [1] have initiated our NEPA review under the FERC's Pre-Filing Process. The purpose of the Pre-Filing Process is to encourage the early involvement of interested stakeholders and to identify and resolve issues before an application is filed with the FERC. The initial Notice of Intent (NOI) for this Project was issued by the FERC on October 16, 2007. Since that time, Algonquin has reduced the scope of the Project and has announced that it is considering adopting an alternative pipeline route in the Stoughton and Canton, Massachusetts area, the Cross Country Alternative 4. With this NOI, we are specifically requesting comments on the Cross Country Alternative 4. Further details on how to submit comments are provided in the Public Participation section of this NOI. Please note that comments on this NOI are requested by May 14, 2008.

This NOI is being sent to landowners affected by the initially proposed Project (including those no longer affected due to the reduction in Project facilities); landowners affected by the Cross Country Alternative 4; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers. We encourage government representatives to notify their constituents of this planned Project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, you may be contacted by an Algonquin representative about the acquisition of an easement to construct, operate, and maintain the proposed Project facilities. Algonquin would seek to negotiate a mutually acceptable agreement. However, if the Project is approved by the FERC, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A number of fact sheets prepared by the FERC, including ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' and ''Guide to Electronic Information at FERC,'' are available for viewing on the FERC Internet Web site (*http://www.ferc.gov*), using the ''For Citizens'' link. These fact sheets address a number of typically asked questions including how to participate in the Commission's proceedings and how to access information on FERC-regulated projects in your area.

Involvement of Other Agencies

The U.S. Army Corps of Engineers and the U.S. Environmental Protection Agency have agreed to participate as cooperating agencies in the preparation of the EIS to satisfy their respective NEPA responsibilities. The Project must also undergo an environmental review pursuant to the Massachusetts Environmental Policy Act (MEPA). The Massachusetts Executive Office of Energy and Environmental Affairs (MEEA) is the lead state agency with responsibility for ensuring compliance with the MEPA regulations for interstate natural gas pipeline projects. The FERC and the MEEA are conducting a coordinated NEPA/MEPA review of the E2W Project through use of a Special Review Procedure.

Summary of the Proposed Project

Algonquin proposes to modify portions of its existing pipeline system in Massachusetts, Rhode Island, Connecticut, New York, and New Jersey. In the initial NOI, the E2W Project included construction and operation of 46.1 miles of various diameter pipeline and associated ancillary pipeline facilities. In addition, Algonquin proposed to construct 2 new compressor stations in Massachusetts, install over-pressure protection regulation at 4 sites in Massachusetts, and install minor modifications at 5 existing compressor stations and 29 existing meter stations along Algonquin's system in the 5 Project states.

Since that time, Algonquin has reduced the scope of the E2W Project by removing approximately 12.2 miles of the proposed Q–1 System Replacement in Norfolk County, Massachusetts and the entire 3.6 miles of the proposed C–1 System Replacement in New Haven County, Connecticut. The Boxford Compressor Station in Essex County, Massachusetts; the corresponding alternative Danvers Compressor Station in Essex County, Massachusetts; and modifications to the Chaplin Compressor Station in Windham County, Connecticut have also been removed from the proposal.

The revised Project scope currently proposed by Algonquin consists of 30.3 miles of various diameter pipeline, of which 13.0 miles would consist of new pipeline in Massachusetts and 17.3 miles would consist of the replacement of existing pipeline in Massachusetts and Connecticut, one new compressor station, modifications to existing compressor and meter stations, and other aboveground facilities as described in more detail below. These facilities and the possible environmental impacts from their construction and operation were described in detail in draft resource reports filed with the FERC on February 22, 2008.

- I–10 Extension—construction of approximately 13.0 miles of new 36-inch-diameter pipeline in Norfolk County, Massachusetts;
- Q–1 System Replacement—installation of approximately 6.3 miles of 36-inch-diameter pipeline that would replace a segment of an existing 24-inch-diameter pipeline in Norfolk County, Massachusetts;
- E–3 System Replacement—installation of approximately 11.0 miles of 12-inch-diameter pipeline that would replace a segment of an existing 6- and 4-inch-diameter pipeline in New London County, Connecticut;
- Rehoboth Compressor Station—a new 10,310-horsepower compressor station in Bristol County, Massachusetts;
- Modifications to four existing compressor stations to accommodate bi-directional flow along Algonquin's system including:

[1] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the FERC's Office of Energy Projects.

○ Burrillville Compressor Station in Providence County, Rhode Island;

○ Cromwell Compressor Station in Middlesex County, Connecticut;

○ Southeast Compressor Station in Putnam County, New York; and

○ Hanover Compressor Station in Morris County, New Jersey;

• Aboveground over-pressure protection regulation at two existing meter stations (Weymouth and Sharon Meter Stations) and at two new regulator stations (end of the I–10 Extension and end of the Q–1 System) along the Algonquin system in Massachusetts;

• Installation of gas chromatographs at 29 existing meter stations in Massachusetts (9), Connecticut (11), Rhode Island (2), New York (5), and New Jersey (2);

• Installation of mainline valves along the proposed pipeline facilities in Massachusetts and Connecticut; and

• Installation of pig [2] launcher and receiver facilities to connect with the existing Algonquin facilities in Massachusetts and Connecticut.

In addition, Algonquin has been evaluating several possible alternative pipeline routes in the Stoughton and Canton, Massachusetts area. Based on input received from landowners, public officials, and other interested parties, Algonquin is seriously considering the Cross Country Alternative 4 route as it finalizes the pipeline alignment that will be proposed to the FERC in its formal application. The Cross Country Alternative 4 would require 1.15 miles of pipeline replacement on Algonquin's Q-system and construction of a 2.4-mile-long pipeline that would create new right-of-way in the general area of Glen Echo Pond on the Canton/Stoughton border before intersecting the NSTAR Gas & Electric Corporation (NSTAR) powerline right-of-way, west of State Highway 24. Use of this alternative would eliminate 2.74 miles of the originally proposed I–10 Extension, of which 1.41 miles would parallel the NSTAR powerline in the vicinity of Pine Street in northeastern Stoughton and 1.33 miles would create new right-of-way across designated open space in the vicinity of the Canton/Stoughton border.

A general overview of the currently proposed major Project facilities is shown in Appendix 1. A map depicting the Cross Country Alternative 4 under consideration and the corresponding segment of the previously proposed route is presented in Appendix 2.[3]

Algonquin indicates that the proposed Project would provide increased natural gas supplies and enhanced system reliability to natural gas distributors throughout the New England region. Once completed, the Project would provide 746,500 dekatherms per day of additional natural gas transportation service on Algonquin's system. This additional capacity would enable Algonquin to accommodate increased receipts of natural gas from emerging natural gas supplies, including liquefied natural gas (LNG) terminals located offshore at the east end of the Algonquin system, for redelivery to high growth markets in the Northeast Region.

Algonquin anticipates that construction of the E2W Project would begin in April 2009, with a projected in-service date of November 2009.

Land Requirements for Construction

Algonquin indicates that construction of its proposed pipeline and aboveground facilities would require about 491 acres of land, including land requirements for the construction right-of-way, temporary extra work areas, access roads, pipe storage and contractor yards, and aboveground facilities. Following construction, about 156 acres of land would be retained as permanent right-of-way for the pipeline and operation of the aboveground facility sites, of which 74 acres are currently part of Algonquin's existing easement. The remaining 335 acres of land would be restored and allowed to revert to its former use.

In general, the construction rights-of-way for the new and replacement pipelines would range from 75 to 85 feet wide with additional temporary workspace needed at certain feature crossings and to stockpile trench spoil and rock generated from trench excavation. For the majority of the route, the construction rights-of-way would overlap the existing, cleared permanent rights-of-way of Algonquin and NSTAR by various amounts. For example, the centerline of the proposed I–10 Extension pipeline would generally be situated 5 feet inside the existing NSTAR powerline right-of-way. The pipelines for the Q–1 and E–3 Systems would be installed in the same trench as the pipelines they are replacing to the extent practicable. This same-trench replacement method of construction is referred to by Algonquin as the lift and relay method. After construction, a 30- to 50-foot-wide permanent right-of-way would be retained.

The proposed Rehoboth Compressor Station would require approximately 10 acres of land for permanent development of the compressor station and associated roads and piping. Algonquin is considering the acquisition of land parcels totaling approximately 97 acres for the station.

The modifications to the four existing compressor stations would occur within the fenceline of the existing developed compressor station sites. The over-pressure protection regulation at the two existing meter stations would be installed within previously disturbed areas at the meter station sites. The over-pressure regulator stations at the two new sites would require approximately 1 acre at each site. The installation of gas chromatographs at the 29 existing meter stations along the Algonquin system would occur within the fenceline of the existing developed meter station site. The mainline valves and pig launchers and receivers would be installed within the permanent right-of-way and would not require additional land.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the potential changes to Algonquin's proposal. By becoming a commentor, your concerns will be addressed in our EIS and considered during the NEPA and MEPA reviews. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen the environmental impact. The more specific your comments, the more useful they will be.

To expedite our receipt and consideration of your comments, the Commission strongly encourages electronic submission of any comments on this Project. See Title 18 Code of Federal Regulations 385.2001(a)(1)(iii) and the instructions on the Commission's Internet Web site at *http://www.ferc.gov* under the link to ''Documents and Filings'' and ''eFiling.'' eFiling is a file attachment process and requires that you prepare your submission in the same manner as you would if filing on paper, and save it to a file on your hard drive. New eFiling

[2] A pig is an internal tool that can be used to clean and dry a pipeline and/or to inspect it for damage or corrosion.

[3] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's Internet Web site (*http://www.ferc.gov*) at the ''eLibrary'' link or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary refer to the Additional Information section of this notice. Copies of the appendices were sent to all those receiving this notice in the mail. Requests for detailed maps of the proposed facilities should be made directly to Algonquin by calling 1–800–788–4143.

users must first create an account by clicking on ''Sign up'' or ''eRegister.'' You will be asked to select the type of filing you are making. This filing is considered a ''Comment on Filing.'' In addition, there is a ''Quick Comment'' option available, which is an easy method for interested persons to submit text only comments on a project. The Quick-Comment User Guide can be viewed at *http://www.ferc.gov/docs-filing/efiling/quick-comment-guide.pdf*.

Quick Comment does not require a FERC eRegistration account; however, you will be asked to provide a valid e-mail address. All comments submitted under either eFiling or the Quick Comment option are placed in the public record for the specified docket or project number(s). The docket no. for the E2W Project is PF07–15–000. Your comments must be submitted electronically by May 14, 2008.

If you wish to mail comments, please mail your comments so that they will be received in Washington, DC on or before May 14, 2008 and carefully follow these instructions:

Send an original and two copies of your letter to:

- Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;
- Label one copy of your comments for the attention of the Gas Branch 3, DG2E; and
- Reference Docket No. PF07–15–000 on the original and both copies.

Once Algonquin formally files its application with the Commission, you may want to become an ''intervenor,'' which is an official party to the proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in a Commission proceeding by filing a request to intervene. Instructions for becoming an intervenor are included in the User's Guide under the ''e-filing'' link on the Commission's Web site. Please note that you may *not* request intervenor status at this time. You must wait until a formal application is filed with the Commission.

Environmental Mailing List

Everyone who provides comments on this Supplemental NOI will be retained on the mailing list. If you do not want to send comments at this time but still want to stay informed and receive copies of the draft and final EISs, you must return the Mailing List Retention Form (Appendix 3). Also, indicate on the form your preference for receiving a paper version of the EIS in lieu of an electronic version of the EIS on CD–ROM.

Note: If you are no longer potentially affected by the proposed Project due to the reduction in proposed facilities (e.g., removal of the Boxford/Danvers Compressor Station, 12.2 miles of the proposed Q–1 System Replacement, and 3.6 miles of the proposed C–1 System Replacement) you will be taken off the mailing list if you do not send comments in response to this Supplemental NOI or return the Mailing List Retention Form (Appendix 3). This is an effort to reduce unnecessary correspondences for those parties that are no longer potentially affected by this Project.

If you have previously submitted comments or returned a Mailing List Retention Form and are not subject to removal from our mailing list, as stated above, you are already on our mailing list and do not need to resubmit comments or a Mailing List Retention Form.

Additional Information

Additional information about the Project is available from the Commission's Office of External Affairs at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the ''eLibrary'' link. Click on the eLibrary link, click on ''General Search,'' and enter the docket number excluding the last three digits in the Docket Number field (i.e., PF07–15). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as Orders, notices, and rule makings.

In addition, the FERC now offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. To register for this service, go to *http://www.ferc.gov/esubscribenow.htm*.

Public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

To request additional information on the proposed Project or to provide comments directly to the Project sponsor, you can contact Algonquin by calling toll free at 1–800–788–4143. Also, Algonquin has established an Internet Web site at *http://www.easttowestexpansion.com*. The Web site includes a description of the Project, an overview map of the pipeline route, links to related documents, and photographs of the Project area. Algonquin will update the Web site as the environmental review of its Project proceeds.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–8497 Filed 4–18–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–208–000]

Rockies Express Pipeline, LLC; Notice of Availability of the Final Environmental Impact Statement for the Proposed Rex East Project

April 11, 2008.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared this final environmental impact statement (EIS) for the construction and operation of the natural gas pipeline facilities proposed by Rockies Express Pipeline LLC (Rockies Express) in the above-referenced docket. The Project facilities would be located in Wyoming, Nebraska, Missouri, Illinois, Indiana, and Ohio.

The final EIS was prepared to satisfy the requirements of the National Environmental Policy Act (NEPA). The U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, Natural Resources Conservation Service, and Illinois Department of Agriculture are cooperating agencies for the development of the EIS. A cooperating agency has jurisdiction by law or special expertise with respect to potential environmental impacts associated with the proposal and is involved in the NEPA analysis.

Based on the analysis included in the EIS, the FERC staff concludes that if the Project is constructed and operated in accordance with applicable laws and regulations, and the project sponsor's proposed mitigation, and the staff's additional mitigation recommendations, it would have mostly limited adverse environmental impacts and would be an environmentally acceptable action.

The Rockies Express (REX) East Project would consist of the construction and operation of

approximately 639.1 miles of 42-inch-diameter natural gas pipeline and a total of 225,716 horsepower (hp) of new compression. The REX East Project would be part of the Rockies Express Pipeline System—a 1,679-mile natural gas pipeline system that would extend from Colorado to Ohio. The Project pipeline would deliver up to 1.8 billion cubic feet per day of gas to other interstate natural gas pipelines. The Project would provide access to an additional 19 inter- and intra-state natural gas pipelines at 13 interconnect points.

The EIS addresses the potential environmental effects of the construction and operation of the following natural gas pipeline facilities proposed by Rockies Express:

- 639.1 miles of 42-inch-diameter natural gas pipeline in Missouri, Illinois, Indiana, and Ohio;
- Seven new compressor stations (Mexico Compressor Station in Audrain County, Missouri; Blue Mound Compressor Station in Christian County, Illinois; Bainbridge Compressor Station in Putnam County, Indiana; Hamilton Compressor Station in Warren County, Ohio; Chandlersville Compressor Station in Muskingum County, Ohio; Arlington Compressor Station in Carbon County, Wyoming; and Bertrand Compressor Station in Phelps County, Nebraska; and
- 19 meter stations and associated interconnecting pipeline facilities at 13 locations along the proposed pipeline route and 42 mainline valves.

The final EIS has been placed in the public files of the FERC and is available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Copies of the final EIS have been mailed to federal, state, and local agencies, public interest groups, individuals who have requested the final EIS, or provided comments; libraries and newspapers in the Project area; and parties to this proceeding. Hard copy versions of this EIS were mailed to those specifically requesting them, and all others received a CD–ROM. A limited number of hard copies and CD–ROMs are available from the Public Reference Room identified above.

Additional information about the Project is available from the Commission's Office of External Affairs, at 1–866–208–FERC (3372) or on the FERC Internet Web site (*http://www.ferc.gov*). Using the ''Documents and Filings'' tab, click on the ''eLibrary link,'' and select ''General Search.'' Enter the project docket number excluding the last three digits (*i.e.*, CP07–208) in the ''Docket Number'' field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. To register for this service, go to the eSubscription link on the FERC Web site (*http://www.ferc.gov/docs-filing/esubscription.asp*).

Kimberly D. Bose,

Secretary.

[FR Doc. E8–8493 Filed 4–18–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA07–101–001]

El Paso Electric Company; Notice of Filing

April 11, 2008.

Take notice that on April 10, 2008, El Paso Electric Company, pursuant to section 206 of the Federal Power Act, submitted a revised Attachment C of its Open Access Transmission Tariff.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on May 1, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–8490 Filed 4–18–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER93–465–042; ER96–417–011; ER96–1375–012; OA96–39–019; OA97–245–012]

Florida Power & Light Company; Notice of Filing

April 11, 2008.

Take notice that on April 8, 2008, Florida Power & Light Company tendered for filing in compliance with Commission's Order issued April 25, 2005, a refund report.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.*

Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on April 29, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–8489 Filed 4–18–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC08–66–000]

JP Morgan Chase & Co., The Bear Stearns Companies Inc.; Notice of Filing

April 11, 2008.

Take notice that on April 10, 2008, JP Morgan Chase & Co., The Bear Stearns Companies Inc., and Bear Stearns' public utility subsidiaries (collectively, Applicants), submitted an application for authorization under section 203 of the Federal Power Act. The Applicants state that the transaction as defined in the application will not have any effect on the limited sales of reactive power at cost-based rates.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on April 18, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–8487 Filed 4–18–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM07–3–002]

North American Electric Reliability Corporation; Notice of Filing

April 11, 2008.

Take notice that on April 1, 2008, the North American Electric Reliability Corporation (NERC) made a compliance filing submitting modifications to Violation Risk Factors for ten Requirements in the Facilities Design, Connections and Maintenance (FAC) Reliability Standards as directed in Order No. 705, the Commission's Final Rule approving as mandatory and enforceable the FAC Reliability Standards. *Facilities Design, Connections and Maintenance Reliability Standard*, Order No. 705, 73 FR 1770 (January 9, 2008), 121 FERC ¶ 61,296, P 135 (2007). NERC is the Commission-certified Electric Reliability Organization responsible for developing and enforcing mandatory Reliability Standards. Order No. 705 was issued on December 27, 2007.

Any person desiring to comment or to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests will be considered by the Commission in determining the appropriate action to be taken. Comments or protests must be filed on or before the comment date.

The Commission encourages electronic submission of comments and protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest 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 April 22, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–8485 Filed 4–18–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA07–40–002]

Portland General Electric Company; Notice of Filing

April 11, 2008.

Take notice that on April 10, 2008, Portland General Electric Company tendered for filing revised tariff sheets for its Open Access Transmission Tariff containing non-rate terms and conditions required to comply with Commission's March 11, 2008 Order.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion

to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on May 1, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–8491 Filed 4–18–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. JR07–1–000; P–2261–007]

Avista Corporation; Notice of Jurisdictional Review and Soliciting Comments, Motions To Intervene, and Protests

April 14, 2008.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Jurisdictional Review.

b. *Docket Nos:* JR07–1–000 and P–2261–007.

c. *Date Filed:* June 22, 2007, with supplement July 20, 2007.

d. *Applicant:* Avista Corporation.

e. *Name of Project:* Lolo-Divide-Creek Transmission Line.

f. *Location:* The existing Lolo-Divide-Creek Transmission Line (Lolo Line) is located near Lewiston in Nez Perce and Idaho Counties, Idaho, and occupies lands of the United States in the Wallowa-Whitman National Forest.

g. *Filed Pursuant to:* Section 23(b)(1) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* John A. Whittaker, IV, Winston & Strawn LLP, 1700 K Street, NW., Washington, DC 20006–3817; Telephone: (202) 282–5000; Fax: (202) 282–5100; e-mail: *jwhitaker@winston.com*.

i. *FERC Contact:* Any questions on this notice should be addressed to Henry Ecton (202) 502–8768, or E-mail: *henry.ecton@ferc.gov*.

j. *Deadline for filing comments and/or motions:* May 14, 2008.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at: *http://www.ferc.gov* under the ''e-Filing link.''

Please include the docket numbers (JR07–1–000 and P–2261–007) on any protests, comments and/or motions filed.

k. *Description of Filing:* The Avista Corporation does not intend to seek a subsequent license for the Lolo Line because the transmission line is not a primary line subject to the Commission's jurisdiction. As originally licensed, FERC Project No. 2261 consists of a 231-kV transmission line known as the Lolo-Divide Creek Transmission Line, extending from the Lolo substation approximately 43 miles to Divide Creek, where it connects with a similar line originating at the Oxbow Plant of Idaho Power Company's Hells Canyon Project No. 1971. The filing concludes that the Lolo Line is no longer a primary line, as defined by § 3(11), 16 U.S.C. 796(11) of the Federal Power Act, and is not required to be licensed by the Commission.

When a request for Jurisdiction Review is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Locations of the Application:* Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, and/or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTESTS'', and/or ''MOTIONS TO INTERVENE'', as applicable, and the Docket Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the applicant specified in the particular application.

p. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–8498 Filed 4–18–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC08–66–000]

JPMorgan Chase & Co., The Bear Stearns Companies Inc., and Its Public Utility Subsidiaries; Notice Amending Prior Notice

April 14, 2008.

The Commission hereby amends the notice issued April 11, 2008, in the above-captioned proceeding. Take notice that on April 10, 2008, JPMorgan Chase & Co., The Bear Stearns Companies Inc., and Bear Stearns' public utility subsidiaries (Applicants) filed a supplement to its March 31, 2008, section 203 application. The Applicants state that the transaction as defined in the application will not have any effect on the limited sales of reactive power at cost-based rates. In addition, the Applicants submit a revised Exhibit M to the Application in lieu of the Exhibit M previously submitted on March 31, 2008.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on April 18, 2008.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–8573 Filed 4–18–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR08–19–000]

Northwest Natural Gas Company; Notice of Petition for Rate Approval

April 11, 2008.

Take notice that on March 31, 2008, Northwest Natural Gas Company (NW Natural) filed a petition for rate approval for its FERC jurisdictional firm and interruptible storage and related transportation service, pursuant to Section 284.123(b)(2) and 284.224. This petition proposes to reduce certain existing maximum rates and keep other existing maximum rates the same. NW Natural proposes the following: (1) A reduced maximum monthly reservation charge of $5.3325/Dth, (2) currently approved maximum monthly capacity charge of $0.0600/Dth, (3) currently approved maximum commodity charge of $0.0075/Dth, (4) the reduced maximum authorized overrun rate for both firm and interruptible of $0.1753/Dth. All the maximum rates may be discounted, and the minimum is zero. In addition NW Natural proposes to continue its non-discounted fuel charge of 2% for each Dth.

Any person desiring to participate in this rate proceeding must file a motion to intervene or to protest this filing in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time, April 25, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–8492 Filed 4–18–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08–99–000]

Trunkline Gas Company, LLC; Notice of Request Under Blanket Authorization

April 11, 2008.

Take notice that on April 2, 2008, Trunkline Gas Company, LLC (Trunkline), P. O. Box 4967, Houston, Texas 77210–4967, filed in Docket No. CP08–99–000, a prior notice request pursuant to sections 157.205, 157.208, and 157.210 of the Federal Energy Regulatory Commission's regulations under the Natural Gas Act for authorization to construct and operate the Field Zone Expansion II Pipeline Project, located in Jasper County, Texas, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Specifically, Trunkline proposes to construct, own, and operate approximately 6.6 miles of 36-inch diameter mainline pipeline and appurtenant facilities, looping Trunkline's existing pipeline in Jasper County, Texas, augmenting the Field Zone Expansion Project facilities. Trunkline estimates the cost of construction to be $24,490,000. Trunkline states that this new pipeline loop, designated as Line 100–3, will allow Trunkline to provide an additional 95 MMcf/day of firm transportation service in Trunkline's field zone system in Texas.

Any questions regarding the application should be directed to Stephen T. Veatch, Regulatory Affairs, Trunkline Gas Company, LLC, 5444 Westheimer Road, Houston, Texas 77056, call (713) 989–2024, or fax (713) 989–1158, or by e-mail *stephen.veatch@SUG.com.*

Any person or the Commission's Staff may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and, pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–8486 Filed 4–18–08; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

April 15, 2008.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission invites the general public and other Federal agencies to comment on the following information collection(s). Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. An agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before June 20, 2008. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit all PRA comments by e-mail or U.S. post mail. To submit your comments by e-mail, send them to *PRA@fcc.gov.* To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s), contact Cathy Williams at (202) 418–2918 or send an e-mail to *PRA@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0394.

Title: Section 1.420, Additional Procedures in Proceedings for Amendment of FM, TV or Air-Ground Table of Allotments.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 30 respondents; 30 responses.

Estimated Time per Response: 0.33 hours.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority of this information collection is contained in 154(i) of the Communications Act of 1934, as amended.

Total Annual Burden: 10 hours.

Total Annual Cost: $9,000.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: 47 CFR 1.420(j) requires a petitioner seeking to withdraw or dismiss its expression of interest in allotment proceedings to file a request for approval. This request would include a copy of any related written agreement and an affidavit certifying that neither the party withdrawing its interest nor its principals has received any consideration in excess of legitimate and prudent expenses in exchange for dismissing/withdrawing its petition, the exact nature and amount of consideration received or promised, an itemization of the expenses for which it is seeking reimbursement, and the terms of any oral agreement. Each remaining party to any written or oral agreement must submit an affidavit within five (5) days of petitioner's request for approval stating that it has paid no consideration to the petitioner in excess of the petitioner's legitimate and prudent expenses and provide the terms of any oral agreement relating to the dismissal or withdrawal of the expression of interest.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–8565 Filed 4–18–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

April 15, 2008.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission invites the general public and other Federal agencies to comment on the following information collection(s). Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. An agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before June 20, 2008. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit all PRA comments by email or U.S. post mail. To submit your comments by e-mail, send them to *PRA@fcc.gov.* To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s), contact Cathy Williams at (202) 418–2918 or send an e-mail to *PRA@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1086.

Title: Section 74.786, Digital Channel Assignments; Section 74.787, Digital Licensing; Section 74.790, Permissible Service of Digital TV Translator and LPTV Stations; Section 74.794, Digital Emissions; Section 74.796, Modification of Digital Transmission Systems and Analog Transmission Systems for Digital Operation.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents and Responses: 8,443 respondents; 34,660 responses.

Estimated Time per Response: 0.5–4 hours.

Frequency of Response: One-time reporting requirement; Third party disclosure requirement; Recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained at 47 U.S.C. 301 of the Communications Act of 1934, as amended.

Total Annual Burden: 55,417 hours.

Total Annual Cost: $95,734,200.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: 47 CFR Section 74.786(d) requires that digital LPTV and TV translator stations assigned to these channels as a companion digital channel demonstrate that a suitable in-core channel is not available. The demonstration will require that the licensee conduct a study to verify that an in-core channel is not available.

47 CFR Section 74.786(d) further requires that digital LPTV and TV translator stations proposing use of channels 52–59 notify all potentially affected 700 MHz wireless licensees of their proposed operation not less than 30 days prior to the submission of their application. These applicants must notify wireless licensees of the 700 MHz bands comprising the same TV channel and the adjacent channel within the licensed geographic boundaries the digital LPTV or TV translator station is proposed to be located, and they must also notify licensees of co-channel and adjacent channel spectrum whose service boundaries lie within 75 miles and 50 miles respectively of their proposed station location.

47 CFR Section 74.786(e) allows assignment of UHF channels 60 to 69 to digital LPTV or TV translator stations for use as a digital conversion channel provided that stations proposing use of these channels notify all potentially affected 700 MHz wireless licensees of their proposed operation not later than 30 days prior to the submission of their application.

47 CFR Section 74.786(e) further provides that digital LPTV and TV translator stations proposing use of UHF channel 63, 64, 68, and 69 (public safety frequencies) as a digital conversion channel must secure a coordinated spectrum use agreement with the pertinent 700 MHz public safety regional planning committee and state administrator prior to the submission of their application.

47 CFR Section 74.786(e) Digital LPTV and TV translator stations proposing use of channels 62, 65, and 67 must notify the pertinent regional planning committee and state administrator of their proposed operation not later than 30 days prior to submission of their application.

47 CFR Section 74.787(a)(2)(iii) provides that mutually exclusive LPTV and TV translator applicants for companion digital stations will be afforded an opportunity to submit in writing to the Commission, settlements and engineering solutions to resolve their situation. (This rule section has been renumbered. It was previously 47 CFR Section 74.787(a)(2)(C)).

47 CFR Section 74.787(a)(3) provides that mutually exclusive applicants applying for construction permits for new digital stations and for major changes to existing stations in the LPTV service will similarly be allowed to *submit* in writing to the Commission, settlements and engineering solutions to rectify the problem.

47 CFR Section 74.787(a)(4) provides that mutually exclusive displacement relief applicants filing applications for digital LPTV and TV translator stations may be resolved by submitting settlements and engineering solutions in writing to the Commission.

47 CFR Section 74.790(f) permits digital TV translator stations to originate emergency warnings over the air deemed necessary to protect and safeguard life and property, and to originate local public service announcements (PSAs) or messages seeking or acknowledging financial support necessary for its continued operation. These announcements or messages shall not exceed 30 seconds each, and be broadcast no more than once per hour.

47 CFR Section 74.790(e) requires that a digital TV translator station shall not retransmit the programs and signal of any TV broadcast or DTV broadcast station(s) without prior written consent of such station(s). A digital TV translator operator electing to multiplex signals must negotiate arrangements and

obtain written consent of involved DTV station licensee(s).

47 CFR Section 74.790(g) requires a digital LPTV station who transmits the programming of a TV broadcast or DTV broadcast station receive prior written consent of the station whose signal is being transmitted.

47 CFR Section 74.794 mandates that digital LPTV and TV translator stations operating on TV channels 22–24, 32–36, 38, and 65–69 with a digital transmitter not specifically FCC-certificated for the channel purchase and utilize a low pass filter or equivalent device rated by its manufacturer to have an attenuation of at least 85 dB in the GPS band. The licensees must retain with their station license a description of the low pass filter or equivalent device with the manufacturer's rating or a report of measurements by a qualified individual.

47 CFR Section 74.796(b)(5) requires digital LPTV or TV translator station licensees that modify their existing transmitter by use of a manufacturer-provided modification kit would need to purchase the kit and must notify the Commission upon completion of the transmitter modifications, hi addition, a digital LPTV or TV translator station licensees that modify their existing transmitter and do not use a manufacturer-provided modification kit, but instead perform custom modification (those not related to installation of manufacturer-supplied and FCC-certified equipment) must notify the Commission upon completion of the transmitter modifications and shall certify compliance with all applicable transmission system requirements.

47 CFR Section 74.796(b)(6) provides that operators who modify their existing transmitter by use of a manufacturer-provided modification kit must maintain with the station's records for a period of not less than two years, and will make available to the Commission upon request, a description of the nature of the modifications, installation and test instructions, and other material provided by the manufacturer, the results of performance-tests and measurements on the modified transmitter, and copies of related correspondence with the Commission. In addition, digital LPTV and TV translator operators who custom modify their transmitter must maintain with the station's records for a period of not less than two years, and will make available to the Commission upon request, a description of the modifications performed and performance tests, the results of performance-tests and measurements on the modified transmitter, and copies of related correspondence with the Commission.

In situations where protection of an existing analog LPTV or translator station without a frequency offset prevents acceptance of a proposed new or modified LPTV, TV translator, or Class A station, the Commission requires that the existing non-offset station install at its expense offset equipment and notify the Commission that it has done so, or, alternatively, negotiate an interference agreement with the new station and notify the Commission of that agreement.

The Commission requires that wireless licensees operating on channels 52–59 and 60–69 notify (by certified mail, return receipt requested) a digital LPTV or TV translator licensee operating on the same channel of first adjacent channel of its intention to initiate or change wireless operations and the likelihood of interference from the LPTV or translator station within its licensed geographic service area. This notification should describe the facilities, associated service area, and operation of the wireless licensee with sufficient detail to permit an evaluation of the likelihood of interference.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–8566 Filed 4–18–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 08–752]

Media Bureau Seeks Comments on Possible Changes to FCC Forms 395–A and 395–B

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Media Bureau seeks comment on possible changes to its annual reporting forms that request certain employee data from multichannel video programming distributors (''MVPDs'') (FCC Form 395–A) (OMB Control No. 3060–0095) and broadcasters (FCC Form 395–B) (OMB Control No. 3060–0390).

DATES: Comments are due May 22, 2008; Reply comments are due June 6, 2008.

ADDRESSES: You may submit comments, identified by MM Docket No. 98–204, by any of the following methods: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (May 1, 1998).

Electronic Filers: Comments and reply comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal:*http://www.regulations.gov.* Filers should follow the instructions provided on the Web site for submitting comments. For ECFS filers, in completing the transmittal screen, filers should include their full name, U.S. Postal service mailing address, and the applicable docket number: MM Docket No. 98–204. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov*, and include the following words in the body of the message: ''get form''. A sample form and instructions will be sent in response.

Paper filers: Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m., on business days. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

People with Disabilities: To request information in accessible formats for people with disabilities (Braille, large print, electronic files, and audio format), send an e-mail to *fcc504@fcc.gov* or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418–0530 (Voice), (202) 418–0432 (TTY).

FOR FURTHER INFORMATION CONTACT: Lewis Pulley of the Policy Division, Media Bureau, at (202) 418–1450.

SUPPLEMENTARY INFORMATION: In *Review of the Commission's Broadcast and Cable Equal Opportunity Rules and Policies*, Third Report and Order and

Fourth Notice of Proposed Rulemaking, 69 FR 34950, June 23, 2004 (19 FCC Rcd 9973 (2004)), the Commission stated that FCC Forms 395–A and 395–B conformed to the racial and employment categories contained in the then-existing Form EEO–1 Employer Information Report issued by the Equal Employment Opportunity Commission (''EEOC''). It noted that the EEOC had proposed to revise its EEO–1 form to incorporate new racial and employment categories adopted by the Office of Management and Budget (''OMB''), and that, when the revised EEO–1 form was released, the Commission would review its forms to see what changes were needed to comply with the new OMB standards, and whether it could so conform those forms to those standards consistent with Sections 334 and 634 of the Communications Act of 1934, as amended (the ''Act''). With the EEOC's release of the revised EEO–1 form incorporating revised racial and employment categories, the Media Bureau has conducted that review, and hereby seeks public comment on whether it should so incorporate the EEOC revised standards and whether such changes are consistent with Sections 334 and 634 of the Act. The revised EEO–1 form, which specifies these categories at Section D, and the Instruction Booklet to the form, which contains the definition of each such category, are attached to the Commission's Public Notice, which can be accessed at *http://www.fcc.gov/mb/policy/eeo.*

FCC Notice Required by the Paperwork Reduction Act

FCC Form 395–A and FCC Form 395–B are approved under OMB control numbers 3060–0095 and 3060–0390, respectively. Remember—you are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor this collection, unless it displays a currently valid OMB control number or if we fail to provide you with this notice.

THE FOREGOING NOTICE IS REQUIRED BY THE PAPERWORK REDUCTION ACT OF 1995, PUBLIC LAW 104–13, OCTOBER 1, 1995, 44 U.S.C. SECTION 3507.

Federal Communications Commission.

Steven A. Broeckaert,

Deputy Division Chief, Media Bureau.

[FR Doc. E8–8458 Filed 4–18–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2861]

Petitions for Reconsideration of Action in Rulemaking Proceeding

April 11, 2008.

Petitions for Reconsideration have been filed in the Commission's Rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents is available for viewing and copying in Room CY–B402, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–800–378–3160). Oppositions to these petitions must be filed by May 6, 2008. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to oppositions must be filed within 10 days after the time for filing oppositions have expired.

Subject: In the Matter of 2006 Quadrennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996 (MB Docket No. 06–121).

Number of Petitions Filed: 1.

Subject: In the Matter of The Commission's Cable Horizontal and Vertical Ownership Limits (MM Docket No. 92–264).

Implementation of Section 11 of the Cable Television Consumer Protection and Competition Act of 1992 (CS Docket No. 98–82).

Implementation of Cable Act Reform Provision of the Telecommunications Act of 1996 (CS Docket No. 96–85).

Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests (MM Docket No. 94–150).

Review of the Commission's Regulation and Policies Affecting Investments in the Broadcast Industry (MM Docket No. 92–51).

Reexamination of the Commission's Cross-Interest Policy (MM Docket No. 87–154).

Number of Petitions Filed: 1.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–8488 Filed 4–18–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2862]

Petitions for Reconsideration of Action in Rulemaking Proceeding

April 11, 2008.

Petitions for Reconsideration have been filed in the Commission's Rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents is available for viewing and copying in Room CY–B402, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–800–378–3160). Oppositions to these petitions must be filed by May 6, 2008. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to oppositions must be filed within 10 days after the time for filing oppositions have expired.

Subject: In the Matter of DTV Consumer Education Initiative (MB Docket No. 07–148).

Number of Petitions Filed: 2.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–8503 Filed 4–18–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CG Docket No. 03–123; DA 08–303]

Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities

AGENCY: Federal Communications Commission.

ACTION: Notice; modification of Intrastate TRS Fund size.

SUMMARY: In this document, the Consumer and Governmental Affairs Bureau (Bureau) adopts a revised Interstate Telecommunications Relay Services (TRS) Fund size and carrier contribution factor for the July 2007 to June 2008 Fund year. This action is necessary because given continued significant growth in VRS minutes, together with the revised compensation rates, the present Fund size may be inadequate to compensate providers for the remainder of the present 2007–2008 Fund year.

DATES: Effective February 6, 2008.

FOR FURTHER INFORMATION CONTACT: Thomas Chandler, Consumer and Governmental Affairs Bureau, Disability

Rights Office at (202) 418–1475 (voice), (202) 418–0597 (TTY), or e-mail at *Thomas.Chandler@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Bureau's Order, document DA 08–303 (*Order*), adopted and released February 6, 2008, adopting a revised TRS Fund size and carrier contribution factor for the July 2007 to June 2008 Fund year. The full text of document DA 08–303 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. Document DA 08–303 also may be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact the Commission's duplicating contractor at its Web site *http://www.bcpiweb.com* or by calling 1–800–378–3160. 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 and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). Document DA 08–303 also can be downloaded in Word or Portable Document Format (PDF) at: *http://www.fcc.gov/cgb/dro/trs.html#orders.*

Synopsis

1. On June 29, 2007, the Bureau released *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* CG Docket No. 03–123, Order, 22 FCC Rcd 11706 (CGB 2007) (*2007 Bureau TRS Rate Order*), which adopted for the 2007–2008 Fund year, compensation rates for the various forms of TRS, a Fund size of $553,378,363.18, and a carrier contribution factor of 0.0072. Subsequently, on November 19, 2007, the Commission released *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* CG Docket No. 03–123, Report and Order and Declaratory Ruling, 22 FCC Rcd 20140 (2007) (*2007 TRS Rate Methodology Order*), published at 73 FR 3197, January 17, 2008, which, *inter alia,* adopted revised compensation rates.

2. On November 30, 2007, the Fund administrator (the National Exchange Carrier Association (NECA)) filed with the Commission a revised Fund size and carrier contribution factor for the 2007–2008 Fund year. NECA proposed increasing the Fund size approximately $83 million (to $636,736,491.75), and increasing the carrier contribution factor from 0.0072 to 0.00819. NECA explained that increasing the Fund size is necessary because demand for certain interstate relay services, particularly Video Relay Service (VRS), has outpaced its initial projections, and the revised compensation rates are generally higher than those adopted at the beginning of the Fund year in the *2007 Bureau TRS Rate Order.* NECA asserted that, as a result, increasing the Fund size is necessary to ensure that it does not run out of money before the end of the Fund year.

3. In addition, as a result of the increase in the Fund size, as well as the Commission's recent order requiring interconnected VoIP service providers to contribute to the Fund, NECA noted that it also must revise the carrier contribution factor. The carrier contribution factor is calculated by dividing the Fund size by total interstate common carrier end-user revenues. The revised Fund size is $636,736,491.75, and NECA proposed using a revised revenue base of $77.7 billion. As a result, the proposed revised carrier contribution factor is 0.00819.

4. The Bureau agrees that because of the continued significant growth in VRS minutes, together with the revised compensation rates, the present Fund size may be inadequate to compensate providers for the remainder of the present 2007–2008 Fund year. Therefore, the Bureau finds it necessary to increase the Fund size and adjust the carrier contribution factor for the July 2007 through June 2008 funding period. Because the TRS regulations provide that the carrier contribution factor shall be determined annually, the Bureau applies the established standards for waiver of Commission rules.

5. Generally, the Commission's rules may be waived for good cause shown. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.

6. Applying this standard, the Bureau concludes that good cause exists to waive the Commission's rules to the extent they require that the carrier contribution factor be determined on an annual basis. The increase in demand usage in TRS was not anticipated, and the Commission must ensure that the Interstate TRS Fund has adequate funds to compensate eligible TRS providers for the provision of eligible TRS services and ensure the continued availability of relay services to persons with hearing and speech disabilities. Therefore, as a result of the significant growth of demand usage in TRS, as well as the new compensation rates, the Bureau adjusts the annual carrier contribution factor for the July 2007 through June 2008 funding period from 0.0072 to 0.00819 in order to collect the additional monies needed over the remaining months of the fund year. The revised Fund size shall be $636,736,491.75.

Ordering Clauses

Pursuant to the authority contained in section 225 of the Communications Act of 1934, as amended, 47 U.S.C. 225, and sections 0.141, 0.361 and 1.3 of the Commission's rules, 47 CFR 0.141, 0.361 and 1.3, document DA 08–303 is adopted.

The Interstate TRS Fund size for the July 2007 through June 2008 funding period will increase from $553,378,363.18 to $636,736,491.75 and, as a result, the annual contribution factor shall be modified from 0.0072 to 0.00819.

Document DA 08–303 became effective on February 6, 2008.

Federal Communications Commission.

Nicole McGinnis,

Deputy Chief, Consumer and Governmental Affairs Bureau.

[FR Doc. E8–8564 Filed 4–18–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank

indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 16, 2008.

A. Federal Reserve Bank of Atlanta (David Smith, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. Commerce Union Bancshares, Inc.; to become a bank holding company by acquiring 100 percent of the voting shares of Commerce Union Bank, both of Springfield, Tennessee.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Algodon de Calidad Bancshares, Inc.; to become a bank holding company by acquiring 100 percent of the voting shares of The First State Bank, both of Abernathy, Texas.

Board of Governors of the Federal Reserve System, April 16, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.E8–8551 Filed 4–18–08; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) allow information collection related to implementation of the Patient Safety and Quality Improvement Act of 2005, 42 U.S.C. 299b–21 to 299b–26, in: ''Patient Safety Organization Certification and Related Forms and a Patient Safety Confidentiality Complaint Form.'' In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), AHRQ invites the public to comment on this proposed information collection.

This proposed information collection was previously published in the **Federal Register** on February 20th, 2008 and allowed 60 days for public comment. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by May 21, 2008.

ADDRESSES: Written comments should be submitted to: AHRQ's OMB Desk Officer by fax at (202) 395–6974 (attention: AHRQ's desk officer) or by e-mail at *OIRA_submission@omb.eop.gov* (attention: AHRQ's desk officer).

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from AHRQs Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ, Reports Clearance Officer, (301) 427–1477.

SUPPLEMENTARY INFORMATION: ''Patient Safety Organization Certification and Related Forms and a Patient Safety Confidentiality Complaint Form.''

The Department of Health and Human Services (HHS) Agency for Healthcare Research and Quality (AHRQ) has been delegated the authority to implement the provisions of the Patient Safety and Quality Improvement Act of 2005 (for brevity referenced here as the Patient Safety Act) that call for submission to the Secretary of certifications by entities seeking to become listed by the Secretary as Patient Safety Organizations (PSOs). These entities must certify that they meet or will meet specified statutory criteria and requirements for PSOs.

The HHS Office for Civil Rights (OCR) has been delegated the authority to enforce the provisions of the Patient Safety Act that mandate confidentiality of ''patient safety work product.'' This term is defined in the statute, at 42 U.S.C. 299b–21(7), and further explained in the related Notice of Proposed Rulemaking published in the **Federal Register** on February 12, 2008, 73 FR 8112–8183. Individuals may voluntarily submit complaints to OCR if they believe that an individual or organization in possession of patient safety work product unlawfully disclosed it.

Methods of Collection

While there are a number of information collection forms described below, they will be implemented at different times, some near the end of the three year approval period for these standard forms. The forms for certifications of information will collect only the minimum amount of information from entities necessary for the Secretary to determine compliance with statutory requirements for PSOs, i.e., each of the required certification forms will consist of short attestations followed by ''yes'' and ''no'' checkboxes to be checked and initialed.

Initial PSO Certification and PSO Recertification Forms

The Patient Safety Act, in 42 U.S.C. 299b–24(a) and the proposed rule in 45 CFR 3.102 provide that an entity may seek an initial three-year listing as a PSO by submitting an initial certification that it has policies and procedures in place to perform eight patient safety activities (enumerated in the statute and the proposed regulation), and that it will comply, upon listing, with seven other statutory criteria. The draft initial certification form also includes four questions related to other requirements for listing related to eligibility and pertinent organizational history. Similarly, the proposed certification form for continued listing as a PSO (for each successive three-year period after the initial listing period) would require certifications that the PSO is performing, and will continue to perform, the eight patient safety activities, and is complying with, and will continue to comply with, the seven statutory criteria. The average annual burden in the first three years of 17 hours per year for the collection of information requested by the certification forms for initial and continued listing is based upon a total average estimate of 33 respondents per year and an estimated time of 30 minutes per response. Information collection, i.e., collection of initial certification forms, will begin as soon as the forms are approved for use. Collection of forms for continued listing will not begin until several months before a date that is three years after the first PSOs are listed by the Secretary. (See *Note* after Exhibit 1.)

Two-Contract Certification

To implement 42 U.S.C. 299b–24(b)(1)(C), AHRQ plans to adopt the following procedure, published in the proposed regulation: In order to

maintain its PSO listing, a PSO will be required only to submit a brief attestation, at least once in every 24-month period after its initial date of listing, indicating that it has entered into contracts with two providers. The annualized burden of 8 hours for the collection of information requested by the two-contract requirement is based upon an estimate of 33 respondents per year and an estimated 15 minutes per response. This collection of information will begin when the first PSO timely notifies the Secretary that it has entered into two contracts.

Disclosure Form

The Patient Safety statute at 42 U.S.C. 299b-24(b)(1)(E) requires a PSO to fully disclose information to the Secretary if the PSO has additional financial, contractual, or reporting relationships with any provider to which the PSO provides services pursuant to the Patient Safety Act under contract or if the PSO is managed or controlled by, or is not operated independently from, any of its contracting providers. Disclosure forms will be collected only when a PSO has such relationships with a contracting provider to report. The Secretary is required to review each disclosure statement and make public findings as to whether a PSO can fairly and accurately carry out its responsibilities. AHRQ assumes that only a small percentage of entities will need to file such disclosure forms. However, AHRQ is providing a high estimate of 17 respondents annually and thus presumably overestimating respondent burden. In summary, the annual burden of 8 hours for the collection of information requested by the disclosure form is based upon the high estimate of 17 respondents per year and an estimated 30 minutes per response. This information collection will begin when a PS0 first reports having any of the specified types of additional relationships with a health care provider with which it has a contract to carry out patient safety activities.

PSO Information Form

Annual completion of a PSO information form will be voluntary and will provide information to HHS on the type of healthcare settings that PSOs are working with to carry out patient safety activities. This form is designed to collect a minimum amount of data in order to gather aggregate statistics on the reach of the Patient Safety Act with respect to types of institutions participating and their general location in the United States. This information will be included in AHRQ's annual quality report, as required under section 923(c) of the Patient Safety Act. No PSO-specific data will be released without PSO consent. The overall annual burden estimate of 17 hours for the collection of information requested by the PSO Information Form is based upon an estimate of 33 respondents per year and an estimated 30 minutes per response. This information collection will begin toward the end of the calendar year in which the first PSOs are listed by the Secretary.

OCR Complaint Form

The complaint form will collect from individuals only the minimum amount of information necessary for OCR to process and assess incoming complaints. The overall annual burden estimate of 17 hours for the collection of information requested by the underlying form is based upon an estimate of 50 respondents per year and an estimated 20 minutes per response. OCR's information collection using this form will not begin until after there is at least one PSO receiving and generating patient safety work product and there is an allegation of a violation of the statutory protection of patient safety work product.

All Administrative Forms

The overall maximum anticipated annual burden estimate is 75 hours for all the above described collections of information. Because the forms filled out by PSOs vary over each of their first three years, the table below includes three-year total estimates divided by three to arrive at an annual estimate of burden hours. (See below.)

EXHIBIT 1.—ESTIMATED ANNUALIZED BURDEN HOURS

Form	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Patient Safety Organization Certification Form	100/3	1	30/60	17
Recertification Form*	50/3	1	30/60	8
Disclosure Form	50/3	1	30/60	8
Two-Contract Requirement Form**	100/3	1	15/60	8
Information Form***	100/3	1	30/60	17
Patient Safety Confidentiality Complaint Form	150/3	1	20/60	17
Total****	500/3	na	na	75

Note: * The Recertification Form will be completed by any interested PSO at least 45 days before the end of its current three-year listing period. The three-year period for computing respondent burden begins with the date when the approved forms are officially made available for submission. Thus the burden period does not correspond exactly to the three-year period of listing. The burden period begins shortly (approximately 30 days) before any PSO's listing period. As a result, the burden for the first PSOs to submit certifications for continued listing at least 45 days before their listing lapses is likely to fall just before the three-year anniversary of their first burden, *i.e.* their completion of their initial certifications and before the end of their third year of listing. We assume completing this form will require 30 minutes, the same time as for the Certification Form. In the out-years, we expect the number of PSOs to remain stable, with the number of new entrants offset by the number of entities that will relinquish their status or be revoked.

** The Two-Contract Requirement Form will be completed by each PSO within the 24-month period after initial listing by the Secretary.

*** The Information Form will collect data by calendar year, beginning close to the end of the calendar year when PSOs are first listed.

**** A total of 100 PSOs are expected to apply over three years: 50 in year 1; 25 in year 2; and 25 in year 3. Relationship Disclosure, Two-Contract, and even voluntary Information Forms may be submitted by individual PSOs in different years. OCR is anticipating considerable variation in the number of complaints per year. Hence we have expressed the total for each year as the average of the expected total over the three year collection period.

EXHIBIT 2.—ESTIMATED ANNUALIZED COST BURDEN

Form	Number of respondents	Total burden hours	Average hourly wage rate	Total cost burden
Patient Safety Organization Certification Form	100/3	17	$29.82	$506.94
Recertification Form	50/3	8	29.82	238.56
Disclosure Form	50/3	8	29.82	238.56
Two-Contract Requirement Form	100/3	8	29.82	506.94
Information Form	100/3	17	29.82	506.94
Patient Safety Confidentiality Complaint Form	150/3	17	29.82	506.94
Total	500/3	67	29.82	2,504.88

Estimated Annual Costs to the Federal Government

a. AHRQ

By statute, AHRQ must collect and review certifications from an entity that seeks listing or continued listing as a PSO under the Patient Safety Act. Additional information collection is also required for entities to remain listed as a PSO (i.e., submissions regarding compliance with the two-contract requirement and reports of certain relationships between a PSO and each of its contracting providers). The cost to AHRQ of processing the information collected with the above-described forms is minimal; an estimated equivalent of only approximately 0.05 FTE or $7,500 per year for each agency and virtually no new overhead costs.

Description	Amount
Personnel & Support Staff	$7,500
Consultant (sub-contractor) services	0
Equipment	0
Supplies	0
All other expenses	0
Average Annual Cost	7,500

b. OCR

OCR cannot conduct its work without collecting information through its proposed complaint forms. Even if OCR did not use complaint forms and only took information orally, it would still have to capture the same information in order to begin processing a complaint. Therefore, the incremental cost to OCR of processing the information collected from the complaint form is minimal and is equivalent to only approximately 0.05 FTE or $7,500 per year with, with virtually no new overhead costs.

Description	Amount
Personnel & Support Staff	$7,500
Consultant (sub-contractor) services	0
Equipment	0
Supplies	0
All other expenses	0
Average Annual Cost	7,500

Request for Comments

In accordance with the above-cited Paperwork Reduction Act legislation, comments on the above-described AHRQ and OCR information collection to implement the Patient Safety Act are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ health care research, quality improvement and information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) 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 upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection.

All comments will become a matter of public record.

Dated: April 14, 2008.

Carolyn M. Clancy,

Director, AHRQ.

[FR Doc. E8–8440 Filed 4–18–08; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: *Technical Assistance for Health IT and Health Information Exchange in Medicaid and SCHIP.* In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), AHRQ invites the public to comment on this proposed information collection.

This proposed information collection was previously published in the **Federal Register** on February 20th, 2008 and allowed 60 days for public comment. No comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by May 21, 2008.

ADDRESSES: Written comments should be submitted to: AHRQ's OMB Desk Officer by fax at (202) 395–6974 (attention: AHRQ's desk officer) or by e-mail at *OIRA_submission@omb.eop.gov* (attention: AHRQ's desk officer).

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by e-mail at *doris.letkowitz@ahrg.hhs.gov*.

SUPPLEMENTARY INFORMATION:

Proposed Project

Technical Assistance for Health IT and Health Information Exchange in Medicaid and SCHIP

AHRQ proposes a three year project to (1) assess the challenges facing Medicaid and State Children's Health Insurance Programs (SCHIP) agencies nationwide as they plan and implement health information technology (health IT) and health information exchange (HIE) programs and (2) provide the agencies with technical assistance to help them overcome these challenges. Health IT refers to the set of electronic tools and methods used for managing information about the health and health care of individuals, groups of individuals, and communities. HIE refers to organized efforts at the local, state, or regional levels to establish the necessary policy, business, operating, and technical mechanisms and structures that allow, support, and promote the exchange of health care information electronically across organizations. Health IT and HIE hold great promise for improving the quality and efficiency of health care in the United States. Medicaid and SCHIP agencies, which receive federal and state funding, serve the most medically and financially vulnerable populations. More than sixty percent of Medicaid beneficiaries have one or more chronic or disabling diseases. In addition, Medicaid and SCHIP beneficiaries frequently experience gaps in eligibility for benefits that cause beneficiaries to seek care from multiple settings, which compromises the accuracy and completeness of their health care records. These populations have much to gain from the coordination of care that can be realized from the adoption of health IT and HIE. Furthermore, as the largest health care purchaser in the United States, Medicaid can influence the adoption of health IT and HIE by providers of care. However, Medicaid and SCHIP agencies face considerable challenges in the implementation of health IT and HIE (Alfreds ST, Tutty M, Savageau JA, Young S, Himmeistein J (2006–2007). ''Clinical Health Information Technologies and the Role of Medicaid.'' *Health Care Financing Review*, Vol. 28, No. 2, pp. 11–20).

A needs assessment of the Medicaid and SCHIP agencies in all fifty six states and territories, including the District of Columbia, will be conducted to gauge the need for technical assistance. The needs assessment will be updated in the second year of the project to assure that the program of technical assistance that is developed will be of maximum utility to the Medicaid and SCHIP agencies.

AHRQ will develop and provide a wide range of technical assistance through workshops and web-based seminars to assist Medicaid and SCHIP agencies to adopt, implement and evaluate health IT and HIE to improve the quality of care for Medicaid and SCHIP beneficiaries. Based on the results of the needs assessment, workshops, and web-based seminars, AHRQ will develop additional tools and resources, such as printed technical materials, to further facilitate the adoption of health IT and HIE among Medicaid and SCHIP agencies.

Method of Collection

The needs assessments will be conducted by telephone or in-person interviews with the directors of each Medicaid and SCHIP agency or with the persons designated by the director as most knowledgeable about their IT systems and planned or current health IT or HIE programs. The content of the needs assessment will be the same whether it is conducted by telephone or in person, and will be pre-populated to the extent possible with information gathered from other sources to reduce the burden on respondents, who can then simply verify that the information is correct. Workshop and seminar participants will be asked to complete a short evaluation of the material presented.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden for this three-year project. The needs assessment will be conducted with an average of thirty agencies per year and will require approximately four hours and ten minutes per agency. Approximately seven workshops will be conducted each year with five agencies participating in each. The workshop evaluations will take approximately fifty minutes to complete. On average, web based seminars will be conducted each year with twenty five agencies participating in each. The seminar evaluations will take approximately twenty five minutes to complete. The total annual burden for the respondents to provide the requested information is 260 hours.

Exhibit 2 shows the estimated annualized cost burden to the respondents for their time to provide the requested information. The total annualized cost burden is estimated to be $10,506.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN

Data collection	Number of respondents (agencies)	Number of responses per respondent	Average burden per response hours	Total burden hours
Needs Assessment	30	1	410/60	125
Workshop evaluations	5	7	50/60	30
Web-based seminar evaluations	25	10	25/60	105
Total	60	na	na	260

EXHIBIT 2.—ESTIMATED ANNUALIZED BURDEN

Form name cost	Number of respondents (agencies)	Total burden hours	Hourly wage rate	Total burden
Needs Assessment	30	125	40.41	$5,051
Workshop evaluations	5	30	40.41	1,212
Web-based seminar evaluations	25	105	40.41	4,243

EXHIBIT 2.—ESTIMATED ANNUALIZED BURDEN—Continued

Form name cost	Number of respondents (agencies)	Total burden hours	Hourly wage rate	Total burden
Total	60	260		10,506

*Based upon the mean hourly wage estimate for NAICS 999000—Federal, State, and Local Government (OES designation) occupation 11–1021 General and Operations Managers, Department of Labor, Bureau of Labor Statistics.

Estimated Annual Costs to the Federal Government

The projected total cost to the Federal Government for this project is $2,990,592 over a three-year period. The projected annual average cost is $996,864. The projected annual cost to design and implement the needs assessment is $180,799. The projected annual cost to develop and implement the workshops is $271,254. The projected annual cost to develop and implement the seminars is $98,187. The projected annual cost to analyze the data and report findings is $132,005. The projected annual administrative cost is $41,973, and the projected annual cost for other technical assistance support is $272,645.

Request for Comments

In accordance with the above-cited Paperwork Reduction Act legislation, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) 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 upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: April 14, 2008.

Carolyn M. Clancy,

Director.

[FR Doc. E8–8442 Filed 4–18–08; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: ''Improving Quality through Health IT: Testing the Feasibility and Assessing the Impact of Using Existing Health IT Infrastructure for Better Care Delivery.'' In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), AHRQ invites the public to comment on this proposed information collection.

This proposed information collection was previously published in the **Federal Register** on February 15th, 2008 and allowed 60 days for public comment. No comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by May 21, 2008.

ADDRESSES: Written comments should be submitted to: AHRQs OMB Desk Officer by fax at (202) 395–6974 (attention: AHRQ's desk officer) or by e-mail at *OIRA_submission@omb.eop.gov* (attention: AHRQ's desk officer).

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by e-mail at *doris.lefkowitz@ahrq.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

''Improving Quality through Health IT: Testing the Feasibility and Assessing the Impact of Using Existing Health IT Infrastructure for Better Care Delivery.''

AHRQ proposes to assess how the use of health information technology (IT) can improve care delivery and outcomes in community health centers. AHRQ is specifically interested in improving the quality of care provided in a community clinic setting through better management of laboratory information. The study will measure the impact of health IT tools on two problems: duplicate laboratory tests and the failure to follow up on laboratory test results of HIV patients and women screened for cervical cancer. In addition, AHRQ will measure the impact of health IT on compliance with evidence-based guidelines for laboratory tests. The study will also investigate whether disparities between vulnerable populations and the general population exist in both laboratory screening rates and rates of abnormal laboratory test results without follow up. To assess the extent of these problems and the impact of health IT, AHRQ will evaluate both quantitative and qualitative components. The qualitative component will use interviews with key informants in two community health centers to gather data on laboratory information processes, laboratory information communication problems and use of health IT tools.

Method of Collection

Quantitative data will be collected directly from the clinical data warehouse used by the participating community health centers to routinely collect laboratory data. The collection will be accomplished using database reports. Qualitative data will be collected through key informant interviews conducted in each of the two participating community health centers. Key informants will include physicians, nurses, medical assistants, IT personnel, and administrators. The total number of interviews to be conducted at both sites is forty-one.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden hours. A total of forty-one in-person interviews will be conducted with administrative and

clinical personnel: Eighteen interviews from administrative personnel and twenty-three interviews from clinical personnel. The question set is the same for both clinical and administrative personnel. The estimated time per response is 1.5 hours for a total of 61.5 burden hours.

Exhibit 2 shows the estimated annualized cost burden for the respondents' time to provide the requested data. The hourly rate of $32.13 is a weighted average of the administrative personnel hourly wage of $19.68 and the clinical personnel hourly wage of $41.88. The total cost burden is $1,976.

EXHIBIT 1.—ESTIMATED ANNUALIZED BURDEN HOURS

Data collection	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
In-person interviews	41	1	1.5	61.5
Total	41	na	na	61.5

EXHIBIT 2.—ESTIMATED ANNUALIZED COST BURDEN

Data collection	Number of respondents	Total burden hours	Average hourly wage rate*	Total cost burden
In-person interviews	41	61.5	$32.13	$1,976
Total	41	na	na	1,976

*Based upon the actual site personnel wages. Clinical personnel averages are weighted by the number of physicians, nurses and medical assistants in the sample. Administrative personnel averages are weighted by the number of administrators, lab, IT and other support personnel. Total average is weighted by relative number of administrative and clinical personnel being interviewed.

Estimated Annual Costs to the Federal Government

The total cost to the Federal Government for this project is $393,457 over a two-year period. The average annual cost is $196,728. The following is a breakdown of average annual costs:

Direct Costs

Personnel—$108,320
Consultancies—$24,400
Data support—$5,000
Travel—$2,575
Supplies—$100
IRB review—$125

Indirect Costs

Indirect costs (40%)—$56,208

Request for Comments

In accordance with the above-cited Paperwork Reduction Act legislation, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ's health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) 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 upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: April 11, 2008.

Carolyn M. Clancy,

Director.

[FR Doc. E8–8444 Filed 4–18–08; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention (CDC)

CDC/HRSA Advisory Committee on HIV and STD Prevention and Treatment

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), CDC and HRSA, announces the following meeting of the aforementioned committee:

Times and Dates: 8 a.m.–5 p.m., May 20, 2008; 8 a.m.–12:30 p.m., May 21, 2008.

Place: JW Marriott Buckhead, 3300 Lenox Road, Atlanta, Georgia 30326, Telephone (404) 262–3344, Fax (404) 262–8689.

Status: Open to the public, limited only by the space available. The meeting room will accommodate approximately 100 people.

Purpose: This Committee is charged with advising the Director, CDC and the Administrator, HRSA, regarding activities related to prevention and control of HIV/AIDS and other STDs, the support of health care services to persons living with HIV/AIDS, and education of health professionals and the public about HIV/AIDS and other STDs.

Matters To Be Discussed: Agenda items include issues pertaining to (1) Hepatitis C in the United States: Prevention, Surveillance, Treatment and Care Issues; (2) CDC Division of Sexual Transmitted Diseases Prevention, External Research Review Recommendations and Plans for Response; (3) Elimination of Health Disparities—CDC's Heightened National Response and CDC's Response to HIV/AIDS among African American Men Having Sex with Men; and (4) CDC's New Integrated Partner Counseling and Referral Services Guidelines.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Margie Scott-Cseh, Committee Management Specialist, CDC, Strategic Business Unit, 1600 Clifton Road, NE., Mailstop E–07, Atlanta, Georgia 30333. Telephone (404) 639–8317, Fax (404) 639–8910.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: April 11, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8–8475 Filed 4–18–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Establishment of a Community-Clinical Partnership for Primary Prevention of Type-2 Diabetes in Persons at High Risk, Potential Extramural Project (PEP) 2008–R–09

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting.

Time and Date: 1 p.m.–2:30 p.m., May 20, 2008 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of ''Establishment of a Community-Clinical Partnership for Primary Prevention of Type-2 Diabetes in Persons at High Risk, PEP 2008–R–09.''

Contact Person for More Information: Linda Shelton, Program Specialist, Coordinating Center for Health and Information Service, Office of the Director, CDC, 1600 Clifton Road, NE., Mailstop E21, Atlanta, GA 30333, Telephone (404) 498–1194.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: April 10, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8–8478 Filed 4–18–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Evaluation of Environmental and Policy Interventions To Increase Fruit and Vegetable Intake, Potential Extramural Project (PEP) 2008–R–11

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting.

Time and Date: 1 p.m.–3 p.m., May 29, 2008 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of ''Evaluation of Environmental and Policy Interventions to Increase Fruit and Vegetable Intake, PEP 2008–R–11.''

Contact Person for More Information: Linda Shelton, Program Specialist, Coordinating Center for Health and Information Service, Office of the Director, CDC, 1600 Clifton Road, NE., Mailstop E21, Atlanta, GA 30333, Telephone (404) 498–1194.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: April 10, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8–8480 Filed 4–18–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Preparing People With Arthritis To Safely Select and Self Direct Their Physical Activity, Potential Extramural Project (PEP) 2008–R–16

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Time and Date: 1 p.m.–2 p.m., May 14, 2007 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of ''Preparing People with Arthritis to Safely Select and Self Direct their Physical Activity, PEP 2008–R–16.''

Contact Person for More Information: Linda Shelton, Program Specialist, Coordinating Center for Health and Information Service, Office of the Director, CDC, 1600 Clifton Road, NE., Mailstop E21, Atlanta, GA 30333, Telephone (404) 498–1194.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: April 10, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8–8483 Filed 4–18–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0189] (formerly Docket No. 2003N–0312)

Meeting to Present Changes to the Animal Feed Safety System Project and the Ranking of Feed Hazards According to the Risks They Pose to Animal and Public Health; Part 3: Swine Feed Example; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following public meeting: ''Meeting to Present Changes to the Animal Feed Safety System (AFSS) Project and the Ranking of Feed Hazards According to the Risks They Pose to Animal and Public Health; Part 3: Swine Feed Example.'' We are holding the public meeting in an effort to gather further information from you, our stakeholders, on changes to AFSS that will help

minimize risks to animal and human health associated with animal feed. The following topics will be discussed: The third draft of the AFSS Framework and work-in-progress on a method for ranking animal feed contaminants by their risks to animal and human health. Elsewhere in this issue of the **Federal Register**, FDA is announcing a related public meeting notice.

Date and Time: The public meeting will be held on May 14, 2008, from 9 a.m. to 4:30 p.m.

Location: The public meeting will be held at the Gaithersburg Holiday Inn, 2 Montgomery Village Ave., Gaithersburg, MD 20877. There is parking adjacent to the building. The building is also accessible by public transportation. (Take Metro Red Line to Shady Grove Station and board Ride-On bus 124 to Frederick Rd. at Perry Pkwy. Then, cross the roadway and walk approximately 1½ blocks north to building entrance.)

Contact Person: *For general information*: Zoe Gill, Center for Veterinary Medicine (HFV–226), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–453–6867, FAX 240–453–6882, e-mail: *zoe.gill@fda.hhs.gov*.

Registration: You may register by telephone, fax, or e-mail by contacting Nanette Milton, Center for Veterinary Medicine (HFV–200), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–453–6840, FAX 240–453–6880, e-mail: *nanette.milton@fda.hhs.gov*. Send registration information (including name, title, firm name, address, telephone, and fax number) to Nanette Milton. To obtain the registration form via the Web site, go to *http://www.fda.gov/cvm/AFSS.htm#Meetings*. Due to limited meeting space, registration will be required. We strongly encourage early registration.

Additionally, please notify Nanette Milton if you need any special accommodations (such as wheelchair access or a sign language interpreter) at least 7 days in advance of the meeting.

Comments: Regardless of attendance at the public meeting, interested persons may submit written or electronic comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday. The docket will remain open for written or electronic comments for 30 days following the meeting.

Please note that on January 15, 2008, the FDA Division of Dockets Management Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic comments or submissions will be accepted by FDA only through FDMS at *http://www.regulations.gov*

SUPPLEMENTARY INFORMATION:

I. Background

AFSS is FDA's program for animal feed aimed at protecting human and animal health by ensuring animal feed is safe. AFSS covers the entire spectrum of agency activities from preapproval of food additives for use in feed, to establishing limits for feed contaminants, providing education and training, and conducting inspections and taking enforcement actions for ensuring compliance with agency regulations. It includes oversight of all feed ingredients and mixed feeds at all stages of manufacture, production, distribution, and use, whether at commercial or non-commercial establishments. Further, AFSS includes feed intended for food-producing and non-food-producing (companion) animals.

During the past several years, FDA has been considering needed changes to AFSS to ensure it is comprehensive, preventive, and risk-based. As part of this effort, the agency released its AFSS Framework document in February 2005 and discussed it at a public meeting held in April 2005 in Omaha, NE. Subsequently, a revised Framework document was made available to the public in December 2006. The revised Framework document includes, among other things, changes necessitated by FDA's Amendments Act of 2007 (FDAAA), which was signed into law September 28, 2007. The ranking scheme for estimating risks posed by feed contaminants to animal and human health consists of two components, namely health consequence scoring and exposure scoring, which were covered at previous meetings in 2006 and 2007, respectively. At this meeting, the agency will describe the model it has developed to rank the risks of the more common hazards in swine feed. The Framework document identifies numerous projects including the development of a model for ranking the risks to human and animal health of contaminants in animal feed. An effective model will permit the agency to systematically distinguish among feed hazards based on the comparative risks they pose to animals or humans. Such a model will consider the risks of hazards present in incoming materials or feed ingredients and will also consider how activities during feed manufacturing, storage, distribution, or transportation may modify such risks. For the purpose of AFSS, FDA defines a feed hazard as a biological, chemical, or physical agent in, or condition of, feed with the potential to cause an adverse health effect in animals or humans.

Previously, FDA held four public meetings to discuss AFSS. The first two meetings, held in September 2003 and April 2005, focused on obtaining input on what was lacking and where and how to address identified deficiencies in the agency's feed safety program. At the next two meetings, held in September 2006 and May 2007, the agency covered developmental aspects of the AFSS risk-ranking model. To determine the comparative risks of chemical, physical, and biological contaminants in animal feed, information about the health consequences posed by the contaminant (represented by a health consequence scoring) is combined with information about the amount of the contaminant in animal feed (represented by an exposure scoring). During the 2006 and 2007 meetings, we described the methods used by the agency to develop scoring systems for ranking animal and human health consequences arising from feed hazards and for ranking exposure to those feed hazards, respectively. The public meetings included active participation by consumers, animal feed processors, animal producers, and State and other Federal Government agencies. Both before and following the meetings, we placed a number of documents in FDA's docket (found in brackets in the heading of this document) for the AFSS project. These documents included transcripts of the meetings, summaries of breakout discussion groups, presentations of invited speakers, and meeting summaries. We also placed in the docket a number of other documents relating to AFSS, including a Framework for AFSS listing the principal components of AFSS and the gaps the agency has identified which are being addressed by the agency team working on the AFSS project. These documents provide excellent, general background material on AFSS for the public meeting that will be held on May 14, 2008.

As a result, in part, of recent actions by the Congress and the Administration, a third draft of the AFSS Framework will be presented at the public meeting. We will also discuss in more detail, where appropriate, several of the gaps identified in the Framework document. In addition, we will show how health consequence scoring is combined with exposure scoring to rank the risks of contaminants in animal feed. Swine feed will be used as the example. We also plan to briefly present the risk-based method being developed to rank feed inspectional programs.

II. Public Meeting

We are holding the public meeting in an effort to gather further information from you, our stakeholders, on changes to AFSS that will help minimize risks to animal and human health associated with animal feed. Prior to the public meeting, FDA will place in the docket (found in brackets in the heading of this document) two documents entitled ''Draft AFSS Framework, 3rd Edition'' and ''Risk-Ranking of Feed Hazards: Swine Feed Example.'' The Framework document will summarize the agency's current efforts to modernize its animal feed safety program. The Risk-Ranking document will provide the methods for ranking potential biological and chemical hazards in feed, using swine feed as an example. Details of these methods will be discussed at the meeting. A draft agenda for the meeting will also be placed in the docket prior to the meeting.

An additional public meeting sponsored by the Center for Veterinary Medicine (CVM) will be held on May 13, 2008, at the same site as the AFSS public meeting. The purpose of the CVM meeting will be for the agency to receive comments on the pet food safety section of FDAAA (Public Law 110–85). Information on the CVM public meeting will be publishing elsewhere in this issue of the **Federal Register**.

III. Transcripts

Please be advised that as soon as a transcript is available, it will be accessible at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*. It may be viewed at the Division of Dockets Management (see *Comments*). A transcript will also be available in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to Division of Freedom of Information (HFI–35), Office of Management Programs, Food and Drug Administration, 5600 Fishers Lane, rm. 6–30, Rockville, MD 20857.

Dated: April 15, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. 08–1154 Filed 4–16–08; 3:47 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Docket No. FDA–2007–N–0442 (formerly Docket No. 2007N–0487)

Opportunity for Public Input on Standards for Pet Food and Other Animal Feeds; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting to obtain input from stakeholder groups, including, but not limited to, the Association of American Feed Control Officials (AAFCO), veterinary medical associations, animal health organizations, and pet food manufacturers, concerning the development of ingredient standards and definitions, processing standards, and labeling standards for pet food. These standards were mandated by the FDA Amendments Act of 2007 (FDAAA). We also would like to obtain input on whether the ingredient standards and definitions and processing standards should cover all animal feeds. Elsewhere in this issue of the **Federal Register**, FDA is announcing a related public meeting notice.

Date and Time: The public meeting will be held on May 13, 2008, from 8 a.m. to 4:30 p.m.

Location: The public meeting will be held at the Gaithersburg Holiday Inn, 2 Montgomery Village Ave., Gaithersburg, MD 20877. There is parking adjacent to the building. The building is also accessible by public transportation. (Take the Metro Red Line to Shady Grove Station, then take Ride-On bus 124 to Frederick Rd. at Perry Pkwy., then cross the roadway and walk approximately 1½ blocks north to the building entrance.)

Contact Persons: For general information, Tracey Forfa, Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Place, Rockville, MD 20855, 240–276–9000, FAX: 240–276–9030, e-mail: *Tracey.Forfa@fda.hhs.gov*; or for information on registration, Nanette Milton, Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Place, Rockville, MD 20855, 240–453–6840, FAX: 240–453–6880, e-mail: *Nanette.Milton@fda.hhs.gov*.

Registration: We request that you preregister to ensure there is sufficient room. Additionally, to assist us in scheduling, we ask that you notify us through the preregistration process if you wish to make a public comment at the meeting. To preregister, please send an electronic mail message to *Nanette.Milton@fda.hhs.gov* no later than May 7, 2008. Your e-mail should include the following information: Your name, company or association name and address as applicable, phone number, and e-mail address. Please state whether you are speaking on behalf of an organization or as an individual. You will receive a confirmation within 2 business days.

FDA also will accept walk-in registration at the meeting site, but space is limited. FDA will try to accommodate all persons who wish to make a public comment at the meeting, including those who register at the meeting site; however, the time allotted for public comments may depend on the number of persons who wish to speak.

Additionally, please notify FDA (see *Contact Persons*) if you need any special accommodations (such as wheelchair access or a sign language interpreter) at least 7 days in advance of the meeting.

A notice in the **Federal Register** about last minute modifications that impact a previously announced public meeting cannot always be published quickly enough to provide timely notice. Accordingly, you should check the FDA Web site at *http://www.fda.gov/cvm* to learn about possible modifications before coming to the meeting.

Comments: To ensure consideration of your comments regarding the development of standards for pet food, you should submit comments by June 13, 2008. While interested persons may comment orally at the public meeting, comments may also be submitted in writing or electronically in lieu of or in addition to oral comments. Send written comment submissions to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*. Follow the instructions for submitting comments.

All comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday. You may also

view received comments at *http://www.regulations.gov*.

Please note that on January 15, 2008, the FDA Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic submissions will be accepted by FDA only through FDMS at h*ttp://www.regulations.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

FDAAA was signed into law by the President on September 27, 2007 (Public Law 110–85). FDAAA Section 1002(a) directs that within 2 years, FDA must establish pet food ingredient standards and definitions, processing standards, and updated standards for pet food labeling that include nutritional and ingredient information. This same provision of the law also directs that, in developing these new standards, FDA obtain input from its stakeholders, including, but not limited to, AAFCO, veterinary medical associations, animal health organizations, and pet food manufacturers. This public meeting is an opportunity for interested stakeholders to present such input and for FDA to hear directly from the public.

In the **Federal Register** of January 7, 2008 (73 FR 1225), FDA announced its intention to hold a public meeting concerning FDAAA Section 1002(a) to gather input from the interested stakeholders and other members of the public. This announcement includes further details regarding the date and location of the public meeting, and also provides additional information regarding the topics and questions to be considered. After the meeting, FDA will review all of the comments made at the meeting and those submitted in writing through the mail or electronically to Docket No. FDA–2007–N–0442 (formerly Docket No. 2007N–0487).

FDA is sponsoring an additional public meeting as part of its Animal Feed Safety System (AFSS) initiative on May 14, 2008, at the same location as the May 13, 2008, FDAAA public meeting. The AFSS is a system that FDA is developing to minimize the risk to animals and public health through the use of risk-based, preventive, and comprehensive animal feed control measures. The purpose of the additional meeting will be for the agency to present the third draft of the AFSS Framework and work-in-progress on a method for ranking animal feed hazards by their risks to animal and human health.

The revised Framework document includes, among other things, recognition of FDA's Food Protection Plan, which was announced in November 2007, and changes to the document necessitated by FDAAA. The ranking scheme for estimating risks posed by feed hazards to animal and human health consists of two components, health consequence scoring and exposure scoring, which were previously presented. At the May 14, 2008, public meeting, FDA will describe methods for ranking risks associated with biological and chemical hazards in feed, using swine feed examples.

Background material relating to AFSS, including previous drafts of the AFSS Framework document, is available at *http://www.fda.gov/cvm/AFSS.htm*.

II. Topics and Questions for Consideration at the May 13, 2008, Public Meeting:

FDA seeks input from stakeholders and other members of the public on the topics and questions discussed below. Given that time will be limited at the public meeting, FDA encourages all interested persons to submit their comments in writing to Docket No. FDA–2007–N–0442 to ensure that their comments are considered.

A. Scope of Meeting.

In enacting FDAAA Section 1002(a), Congress specifically directed FDA to establish, in consultation with relevant stakeholders and other members of the public, ingredient standards and definitions, processing standards, and updated labeling standards for pet food. FDA seeks input from stakeholders and other members of the public on the development of such standards for pet food, including on the specific questions listed below.

In addition, because pet food is well-integrated into the overall animal foods and feeds industry, FDA is concerned that certain new requirements, if limited to pet food only, would be impractical to implement, difficult to enforce, and would not effectively provide the safety enhancements intended by FDAAA. Furthermore, because the standards mandated by FDAAA do not currently exist for any animal food or feed, limiting new requirements to pet food only would fail to address the broader food safety concerns associated with food intended for other animal species, particularly food-producing animals.

FDA is interested in obtaining input from interested stakeholders and the public as to whether the ingredient standards and definitions and processing standards should be developed for all animal feeds. There appears to be little or no difference between ingredients intended for use in pet foods and those intended for use in other animal foods and feeds. Therefore, the agency believes the most appropriate course of action is to develop ingredient standards and definitions and processing standards for all animal feeds, including pet food. FDA believes that such an approach would more effectively carry out the safety objectives of FDAAA, and the broader human food safety provisions of the Federal Food, Drug, and Cosmetic Act. The agency also seeks comment on this or other alternative approaches for implementing Section 1002(a) of FDAAA.

B. Pet Food Labeling.

1. How could the nutritional information (e.g., guaranteed analysis, nutritional adequacy statements/life-stage claims) already present on pet food labels be improved?

2. How could the ingredient information already present on pet food labels (i.e., the ingredient list) be improved?

3. How could the current feeding instructions/recommendations section already present on pet food labels be improved?

4. Should feeding recommendations be required on the labels for all types of pet food?

5. Should a Nutrition Facts box, similar to the format that appears on human food labels, replace the current Guaranteed Analysis that currently appears on pet food labels? If so, how could this Nutrition Facts box be made to clearly distinguish it from human food labeling?

6. What other information should be required on pet food labels that is not generally present on pet food products sold in the United States?

7. Are there existing state laws, regulations, guidelines, or other models that FDA should consider when drafting the proposed pet food labeling?

C. Pet Food Ingredient Standards and Definitions.

1. What kind of ingredient definitions would provide adequate information to ensure the safe and suitable use of the ingredients in pet foods? Should ingredient definitions also be developed for other animal feeds in addition to pet food?

2. Should formal standards be a part of ingredient definitions? If so, what information should be considered to establish a standard? Should such standards be developed for ingredients intended for other animal feeds in addition to pet food?

D. Pet Food Processing Standards

The AFSS initiative is intended to cover the entire spectrum of agency activities from preapproval of food additives for use in feed, to establishing limits for feed contaminants, providing education and training, and conducting inspections and taking enforcement actions for ensuring compliance with agency regulations. Some basic elements of an animal feed safety system are described at: *http://www.fda.gov/ohrms/dockets/98fr/03n–0312–bkg0002.pdf*.

Would standards based on a risk-based, preventive, and comprehensive feed control measures approach, such as the approach described as an element of FDA's AFSS initiative, adequately address the processing standards requirement of section 1002(a) of FDAAA? If so, what aspects of procurement, processing and distribution should be included in such an approach? Should such standards be developed and applied to all animal feeds rather than be limited to pet food?

III. Other Information for the Public Meeting

FDA has posted additional information for the May 13, 2008, public meeting on the CVM Web site at *http://www.fda.gov/cvm*. The agency may make additional background material available to the public and will post that information on the CVM Web site as well. Additionally, background material relating to AFSS, including previous drafts of the AFSS Framework document, is available at *http://www.fda.gov/cvm/AFSS.htm*.

IV. Transcripts

FDA will prepare a meeting transcript that will be entered into the docket. FDA anticipates that transcripts will be available approximately 30 business days after the meeting. The transcript will also be available for public examination at the Division of Dockets Management (HFA–305), 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 15, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. 08–1155 Filed 4–16–08; 3:48 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Pregnancy and Neonatology Study Section, June 2, 2008, 8 a.m. to June 3, 2008, 3 p.m., Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC, 20015 which was published in the **Federal Register** on April 4, 2008, 73 FR 18539–18542.

The meeting will be held one day only June 2, 2008, from 8 a.m. to 5 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: April 14, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–8450 Filed 4–18–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Office of Biotechnology Activities; Recombinant DNA Research; Notice of a Meeting of an NIH Blue Ribbon Panel

There will be a meeting of the NIH Blue Ribbon Panel to advise on the Risk Assessment of the National Emerging Infectious Diseases Laboratories (NEIDL) at the Boston Medical Center. The meeting will be held on Friday, May 2, 2008, at the National Institutes of Health, Building 31, Floor 6C, Conference Room 10, 31 Center Drive, Bethesda, Maryland 20892, from 8:30 a.m. to approximately 11:30 a.m.

The National Research Council Committee that provided technical input on the NIH's Draft Supplementary Risk Assessments and Site Suitability Analyses for the NEIDL will participate in discussions with Panel members regarding the scope and design of additional studies that may be needed to assess risk associated with the siting and operation of the NEIDL.

For further information concerning this meeting contact Ms. Laurie Lewallen, Advisory Committee Coordinator, Office of Biotechnology Activities, Office of the Director, National Institutes of Health, 6705 Rockledge Drive, Room 750, Bethesda, MD 20892–7985, 301–496–9838, *lewallla@od.nih.gov*.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed above in advance of the meeting. Any interested person may file written comments with the panel by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

NIH campus security procedures require that all visitor vehicles, including taxicabs and hotel and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

An agenda and any additional information for the meeting will be posted on the agency's Web site: *http://www.nih.gov/about/director/acd/index.htm.*

Background information may be obtained by contacting NIH OBA by e-mail *oba@od.nih.gov.*

Dated: April 14, 2008.

Amy P. Patterson,

Director, Office of Biotechnology Activities.

[FR Doc. E8–8474 Filed 4–18–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 30-day notice and request for comments; Telephone Survey, OMB 1660–0057, Revision of a currently approved collection.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted the following information collection to the Office of Management and Budget (OMB) for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission describes the nature of the information collection, the categories of respondents, the estimated burden (*i.e.*, the time, effort and resources used by respondents to respond) and cost, and

includes the actual data collection instruments FEMA will use.

SUPPLEMENTARY INFORMATION: Current national conditions of increased risk for man-made and/or accidental chemical disasters create great demand for the constant monitoring of preparedness-related activities. Since the Chemical Stockpile Emergency Preparedness Program (CSEPP) is a cooperative effort among local, State, and Federal governments working closely with the public in communities surrounding fixed hazards, documenting performance at each of these levels is vital for program planning and management in each of the CSEPP sites. Furthermore, since no preparedness program can be successful without the public's understanding and cooperation, input from the residents and businesses of immediate and/or surrounding areas is vital for program managers to design custom-tailored strategies to educate and communicate risks and action plans at the local level. Failure to collect this information will hamper the program's ability to document strengths and weaknesses at each site, forcing managers to rely on intuitive rather than on factual decision-making, with no objective basis to quantify program performance, a requirement of the Government Performance and Results Act (GPRA).

Title: Chemical Stockpile Emergency Preparedness Program (CSEPP) Evaluation and Customer Satisfaction Survey.

Type of Information Collection: Revision of a currently approved collection.

OMB Number: OMB 1660–0057.

Abstract: The Department of Homeland Security (DHS)/FEMA's CSEPP will collect data from State and local governments to measure program effectiveness and establish a quantitative baseline of customer satisfaction with program products and services. Data findings will be used to set customer service standards while providing benchmarks for program monitoring and evaluation. This information collection also constitutes an assessment tool that measures public knowledge of emergency preparedness and response actions in the event of a chemical emergency affecting any of the seven CSEPP sites and surrounding communities. Data from this collection will continue to provide a basis for program planning and management through the development and/or modification of performance standards, the ability to monitor program changes and trends over time, and the capability to objectively evaluate outreach performance against best practices (benchmarks) in multi-hazard readiness programs.

Affected Public: State, Local or Tribal governments.

Number of Respondents: 2,224.

Estimated Time per Respondent: 0.25 hours.

Estimated Total Annual Burden Hours: 556 hours.

ANNUAL HOUR BURDEN

Data collection activity/instrument	Number of respondents (A)	Frequency of responses (B)	Hour burden per response (C)	Annual responses (D) = (A × B)	Total annual burden hours (C × D)
Open-ended Questionnaire[1]	170	1	0.25	170	42.50
Site Survey Questionnaires[2]					
Anniston, AL	961	1	0.25	961	240.25
Pine Bluff, AR	1,093	1	0.25	1,093	273.25
*Total	2,224			2,224	556.00

Notes: [1] State and local officials. [2] Individual/residential respondents.
*Since publication of the 60 day **Federal Register** Notice, Volume 72, Number 224, page 65585, the number of burden hours have decreased from 1910 to 556 due to a drop in the number of sites surveyed and therefore number of respondents surveyed.

Frequency of Response: Annually.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management Budget, Attention: Nathan Lesser, Desk Officer, Department of Homeland Security/FEMA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974. Comments must be submitted on or before May 21, 2008.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 500 C Street, SW., Washington, DC 20472, Mail Drop Room 301, 1800 S. Bell Street, Arlington, VA 22202, facsimile number (202) 646–3347, or e-mail address *FEMA-Information-Collections@dhs.gov.*

Dated: April 2, 2008.

John A. Sharetts-Sullivan,

Director, Records Management Division, Office of Management, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E8–8561 Filed 4–18–08; 8:45 am]

BILLING CODE 9110–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1751–DR]

Arkansas; Amendment No. 3 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 Arkansas (FEMA–1751–DR), dated March 26, 2008, and related determinations.

EFFECTIVE DATE: April 14, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Arkansas is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 26, 2008.

Cross, Lonoke, Pulaski, and Saline Counties for Individual Assistance.

Boone, Carroll, Fulton, and Izard Counties for Individual Assistance (already designated for Public Assistance, including direct Federal assistance).

Clay and Franklin Counties for Individual Assistance (already designated for Public Assistance).

Craighead and Greene Counties for Individual Assistance (already designated for emergency protective measures [Category B], limited to direct Federal assistance, under the Public Assistance program).

Cross, Garland, Lonoke, Saline, and St. Francis Counties for Public Assistance.

Craighead, Greene, and White Counties for Public Assistance (already designated for emergency protective measures [Category B], limited to direct Federal assistance, under the Public Assistance program).

Prairie County for Public Assistance (already designated for Individual 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; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidential Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–8558 Filed 4–18–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

U.S. CUSTOMS AND BORDER PROTECTION

Approval of Inspectorate America Corporation, as a Commercial Gauger

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of approval of Inspectorate America Corporation, as a commercial gauger.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.13, Inspectorate America Corporation, Plot 49 Castle Coakley St., Christiansted, St. Croix, VI 00820, has been approved to gauge petroleum, petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.13. Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquires regarding the specific gauger service this entity is approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories.

http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/.

DATES: The approval of Inspectorate America Corporation, as commercial gauger became effective on January 15, 2008. The next triennial inspection date will be scheduled for January 2011.

FOR FURTHER INFORMATION CONTACT: Randall Breaux, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: April 10, 2008.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. E8–8464 Filed 4–18–08; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Invasive Species Advisory Committee

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of Public Meetings of the Invasive Species Advisory Committee.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of meetings of the Invasive Species Advisory Committee. The purpose of the Advisory Committee is to provide advice to the National Invasive Species Council, as authorized by Executive Order 13112, on a broad array of issues related to preventing the introduction of invasive species and providing for their control and minimizing the economic, ecological, and human health impacts that invasive species cause. The Council is co-chaired by the Secretary of the Interior, the Secretary of Agriculture, and the Secretary of Commerce. The duty of the Council is to provide national leadership regarding invasive species issues. The purpose of a meeting on May 12–14, 2008 is to convene the full Advisory Committee and to discuss implementation of action items outlined in the National Invasive Species Management Plan, which was finalized on January 18, 2001.

DATES: Meeting of the Invasive Species Advisory Committee: Monday, May 12, 2008 through Wednesday, May 14, 2008; beginning at approximately 8 a.m., and ending at approximately 5 p.m. each day. Members will be participating in an off-site tour on Thursday, May 15, 2008.

ADDRESSES: National Park Service Building, 240 West 5th Avenue, Anchorage, AK 99501.

FOR FURTHER INFORMATION CONTACT: Kelsey Brantley, National Invasive Species Council Program Analyst and ISAC Coordinator, (202) 513–7243; Fax: (202) 371–1751.

Dated: April 15, 2008.

Lori Williams,

Executive Director, National Invasive Species Council.

[FR Doc. E8–8533 Filed 4–18–08; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Tribal-State Class III Gaming Amendment Taking Effect.

SUMMARY: This publishes notice of an Amendment to the 1998 Class III Gaming Compacts between the State of Michigan and the Little Traverse Bay Bands of Odawa Indians and the Little River Band of Ottawa Indians taking effect.

EFFECTIVE DATE: April 21, 2008.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. This Amendment is entered into in connection with the settlement of pending litigation and thus presents a set of unique circumstances resulting in our decision to neither approve nor disapprove the

Amendment within the 45-day statutory time frame.

Dated: March 25, 2008.

Carl J. Artman,

Assistant Secretary—Indian Affairs.

[FR Doc. E8–8494 Filed 4–18–08; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–210–5101–ER–D050, IDI–35183/NVN–84663]

Notice of Intent To Prepare an Environmental Impact Statement for the Proposed China Mountain Wind Project

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: The Bureau of Land Management (BLM) Jarbidge Field Office, Twin Falls District, Idaho, intends to prepare an Environmental Impact Statement (EIS) for the proposed China Mountain Wind Project, located on 30,700 acres of public, state, and private lands in the Jarbidge Foothills, southwest of the town of Rogerson in Twin Falls County, Idaho, and west of the town of Jackpot in Elko County, Nevada. The EIS will analyze the potential environmental impacts of the construction and operation of a proposed wind power generation facility, associated transmission facilities, and access roads. The EIS will be prepared in accordance with the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1701), as amended; the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321), as amended; and the Council on Environmental Quality (CEQ) regulations (40 CFR parts 1500–1508). This notice initiates the public scoping process to identify relevant issues associated with the proposed project.

DATES: The scoping period will commence with the publication of this notice. The formal scoping period will end 60 days after the publication of this notice. Comments regarding issues relative to the proposed project should be received on or before June 20, 2008 using one of the methods listed below. The BLM will announce public scoping meetings through local news media, newsletters, and the BLM Web site: *http://www.blm.gov/id/st/en/fo/jarbidge.html* at least 15 days prior to the first meeting.

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

- *E-mail: id_chinamtn_eis@blm.gov.*
- *Fax:* (208) 736–2375 or (208) 735–2076.
- *Mail:* Project Manager, China Mountain EIS, Jarbidge Field Office, 2536 Kimberly Road, Twin Falls, Idaho 83301.

Comments can also be hand delivered to the Jarbidge Field Office at the address above. Documents pertinent to this proposal may be examined at the Jarbidge Field Office.

FOR FURTHER INFORMATION CONTACT: China Mountain Wind Project Manager, Jarbidge Field Office, 2536 Kimberly Road, Twin Falls, Idaho 83301, telephone (208) 732–7413.

SUPPLEMENTARY INFORMATION: China Mountain Wind, LLC, has submitted a right-of-way application to BLM to build a commercial wind power generation facility capable of generating up to 425 megawatts (MW) of electricity. Up to 185 wind turbines, each having a generating capacity between 2.3 and 3.0 MW, would be installed on an area covering approximately 30,700 acres in the Jarbidge Foothills, southwest of Rogerson, Idaho and west of Jackpot, Nevada. The proposed project area includes public land administered by the BLM Elko District, Wells Field Office in northeastern Nevada, public lands administered by the BLM Twin Falls District, Jarbidge Field Office, and State of Idaho and private lands in south-central Idaho.

Administrating ownership	Acres (rounded)
BLM—Jarbidge Field Office, Twin Falls District, Idaho	15,300
BLM—Wells Field Office, Elko District, Nevada	4,700
State of Idaho	2,000
Private	8,700
Total	30,700

The turbines proposed for the project would have tower heights ranging from 200 to 250 feet and rotor diameters ranging from 250 to 300 feet. Each turbine would be set on a large concrete foundation. Turbines would be connected by underground electrical cable to one or two substations. Each substation would be sited on a 2-acre area and would consist of a graveled, fenced area containing transformer and switching equipment and an area to park utility vehicles. Up to 15 miles of new 3-phase 138 kV or 345 kV overhead transmissions circuit would be constructed from each substation to a switching station at the point of interconnection with an existing transmission line. The transmission line would be supported by single steel or double wood poles with a distance of 400 to 500 feet between poles. Other required facilities would include one or two fenced, graveled switching stations of approximately 2 acres each; one or more Operations and Maintenance buildings; approximately 40 miles of new access roads; approximately 30 miles of improved existing road; and a temporary concrete batch plant. This plant would be centrally located on the site, occupying an area of approximately 5 acres, and would operate during project construction. The proposed project would disturb up to 540 acres on a temporary basis and up to 180 acres on a permanent basis, following reclamation of construction disturbance. Approximately 60% of both the temporary and permanent impacts would be on lands under the administration of the BLM and approximately 40% would be on State of Idaho and private lands. The proposed project would operate year-round for a minimum of 30 years.

The purpose and need for the proposed project are: (1) Construct a wind power generation facility that utilizes wind energy resources in an environmentally sound manner to meet existing and future electricity demands in Idaho and Nevada. (2) Provide for renewable energy resources as encouraged by the Energy Policy Act of 2005 and consistent with the BLM's Wind Energy Development Policy, as described in the Record of Decision for the Final Programmatic EIS on Wind Energy Development on BLM-Administered Lands in the Western United States (December 2005).

Public Participation: The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis and EIS alternatives. General concerns in the following categories have been identified to date: Tribal concerns; wildlife (including birds and bats); vegetation (including noxious and invasive weeds); threatened, endangered and sensitive plants and animals, including sage grouse; public safety; public access; recreational opportunities; visual resources; cultural resources; rangeland resources; geology and soils; water quality; climate change and variability; hazardous materials; air quality; noise; fire management and socioeconomics. You may submit comments on issues in writing to the BLM at any public scoping meeting, or you may submit them to the BLM using one of the methods listed in the **ADDRESSES** section above. E-mailed

comments, including attachments, should be provided in .doc, .pdf, .html, or .txt format. Electronic submissions in other formats or containing viruses will be rejected. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

The EIS process will be a collaborative effort that will consider local, regional, and national needs and concerns. The BLM will work closely with interested parties to identify the management decisions that are best suited to the needs of the public. After gathering public comments, the BLM will identify and provide rationale on those issues that will be addressed in the EIS or those issues beyond the scope of the EIS. The Draft EIS, which is scheduled for completion in early 2010, will be provided to the public for review and comment. The BLM will consider and respond to public comments on the Draft EIS in the Final EIS. The Final EIS is expected to be published in late 2010.

Dated: April 11, 2008.

Rick Vander Voet,

Jarbidge Field Office Manager, Idaho Bureau of Land Management.

[FR Doc. E8–8511 Filed 4–18–08; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

[Docket No. MMS–2007–OMM–0072]

MMS Information Collection Activity: 1010–NEW Lease of Submerged Lands for Alternative Energy Activities on the Outer Continental Shelf (OCS); New Collection; Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of a new information collection (1010–NEW) and request for comments.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to the Office of Management and Budget (OMB) an information collection request (ICR) for a new approval of the paperwork requirements in new Form MMS–0001, Lease of Submerged Lands for Alternative Energy Activities on the Outer Continental Shelf (OCS), which is printed within this **Federal Register** notice. This new form is the instrument that MMS will use to issue a lease on the OCS to conduct data collection and/or technology testing. This notice also provides the public a second opportunity to comment on the paperwork burdens associated with the lease form.

DATES: Submit written comments by May 21, 2008.

ADDRESSES: You may submit comments by any of the following methods listed below.

- By fax (202) 395–6566 or e-mail (*OIRA_DOCKET@omb.eop.gov*) directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–NEW). Please also send a copy to MMS.
- Electronically: Go to *http://www.regulations.gov.* Under the tab ''More Search Options,'' click ''Advanced Docket Search'', then select ''Minerals Management Service'' from the agency drop-down menu, then click ''submit.'' In the Docket ID column, select MMS–2007–OMM–0072 to submit public comments and to view available supporting and related materials. Information on using *Regulations.gov,* including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link. All comments submitted will be published and posted to the docket after the closing period.
- Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Attention: Cheryl Blundon, 381 Elden Street, MS–4024, Herndon, Virginia 20170–4817. Please reference ''Information Collection 1010–NEW'' in your comment and include your name and return address.

FOR FURTHER INFORMATION CONTACT: Cheryl Blundon, Regulations and Standards Branch at (703) 787–1607. You may also contact Cheryl Blundon to obtain a copy, at no cost, of Section 388 of the Energy Policy Act. You may contact Maureen A. Bornholdt, Program Manager, Alternative Energy Programs at (703) 787–1300 for lease questions.

SUPPLEMENTARY INFORMATION:

Title: Lease of Submerged Lands for Alternative Energy Activities on the OCS.

Form(s): MMS–0001.

OMB Control Number: 1010–NEW.

Abstract: Section 388 of the Energy Policy Act of 2005 amended the OCS Lands Act to add a new paragraph (p) to section 8 of the Act (43 U.S.C. 1337(p)) to allow the Department of the Interior, acting through the Minerals Management Service (MMS), to grant a lease, easement, or right-of-way on the OCS for activities that produce or support the production of energy from sources other than oil and gas. MMS has established an Alternative Energy and Alternate Use Program to authorize and regulate OCS activities pursuant to this new authority. MMS is in the process of developing proposed regulations that, once finalized, will set the framework for issuing leases, easements and rights-of-way and authorizing OCS alternative energy activities. On November 6, 2007, MMS announced an interim policy that allows the issuance of leases, under this statutory authority, for activities limited to alternative energy resource data collection and technology testing. The interim policy does not allow the issuance of leases for commercial production of alternative energy, such as the full build-out of commercial wind farms.

On December 14, 2007, we published a **Federal Register** notice (72 FR 71152) announcing a new lease form and new information collection requirements. This new lease form is the instrument for limited-term leases issued under MMS' interim policy. The new information collection requirements are needed by MMS in order to authorize activities and convey rights through limited-term leases to conduct data collection and/or technology testing activities on specific areas of the OCS.

This information collection request (ICR) addresses the form and accompanying information. The new lease form will be used by MMS and the emerging alternative energy industry as an instrument specifying the parties' rights and responsibilities under the lease.

We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2). No items of a sensitive nature are collected. Responses are required to obtain or retain benefits or mandatory.

Frequency: On occasion.

Estimated Number and Description of Respondents: Approximately 18–25 (alternative energy) respondents.

Estimated Reporting and Recordkeeping ''Hour'' Burden: The estimated annual ''hour'' burden for this information collection is a total of 3,560 hours. The total estimated annual ''hour'' burden decreased from the

estimate in the 60-day **Federal Register** notice (72 FR 71152), published on December 14, 2007, because of the re-estimation of the number of submissions, as well as the deletion of two requirements that, under closer inspection, were not subject to the PRA. Therefore, the following chart details the current individual components and estimated hour burdens. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Form MMS–0001 sections	Reporting and/or recordkeeping requirement	Hour burden	Average No. of annual responses	Annual burden hour
MMS–0001; Section 1.	Fill out and submit form MMS–0001, Lease Agreement, for consideration; execute lease.	1	13	13
1; 9	Prepare and submit findings of initial survey activities (e.g., geotechnical, geophysical, shallow hazard).	100	13	1,300
2; 20	Designate operator when more than one lessee; report change of address.	1	7	7
4	Request extension of lease term and supporting documentation.	2	1	2
7	Notify MMS 72 hrs prior to commencement/termination of lease; Notify MMS when facility is back in service after being out of service for more than 7 days.	15 mins for each requirement × 2 = 30 mins.	13	7 (rounded)
8; 9	Submit plan/modification and supporting documentation.	100	13	1,300
8(d)	Request for reconsideration of modification. (Exempt as defined in 5 CFR 1320.3(h)(9)).	1	1	1
10	Submit quarterly progress reports	4	104 (26 leases × 4 progress rpts per/ year).	416
10	Upon request, make available all material used by lessee to interpret data.	3	10	30
10	Submit final progress report upon conclusion of activities or termination of lease; retain all data of the lease term plus 3 years.	4	4	16
11	Lessee and relevant third-parties agree to confidential disclosure.	1	13	13
12	Allow access and make records available as requested by MMS inspectors; incorporate same requirement in any contract between lessee and third parties.	2	26	52
14; 15	Demonstrate financial worth/ability to carry out present and future financial obligations; submit bond/additional security information.	4	15	60
16	Request assignment or transfer of lease	30 mins	5	3 (rounded)
17	Submit written relinquishment request	1	3	3
18	Submit report detailing that lessee properly removed structures and restored the area.	10	3	30
19	Incorporate nonprocurement debarment and suspension regulations in contracts and transactions.	10 mins	40	7 (rounded)
1–20	General departure and alternative compliance requests not specifically covered elsewhere in this form.	10	10	100
Exhibit(s)	Compliance with individual stipulations on a case-by-case basis.	5	40	200
Total Burdens			334 Responses	3,560 Hours

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: We have identified no paperwork ''non-hour cost'' burdens associated with the collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *.'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, on December 14, 2007, we published a **Federal Register** notice (72 FR 71152) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. The Paperwork Reduction Act (5 U.S.C.

1320) also informs the public that they may comment at any time on a collection of information. We received 10 comments, one of which was intended for a different **Federal Register** notice and irrelevant to this action. The other nine comments were considered, and where relevant and constructive, we made changes to the lease form. The majority of the comments were on MMS strategy and policies. After consideration of such comments, MMS has determined that changes are not needed in its strategy and policies. The respondents who submitted comments were: American Wind Energy Association (AWEA); Bluewater Wind; California Coastal Commission; Florida Power & Light Company; National Hydropower Association; Ocean Renewable Energy Coalition; Pacific Gas and Electric Company; Southern Company; Oregon Coastal Management Program; and Winergy Power, LLC.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. Although the OMB may take up to 60 days to approve or disapprove the information collection, it may make its decision in as few as 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by May 21, 2008.

Public Availability of Comments: Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

We are incorporating the lease form and the exhibit B versions (Technology testing and demonstration activities—Wave and/or current resources; Data collection activities —Wave and/or current resources; and Data collection activities—Wind resources) into this notice so respondents will be able to give MMS their specific comments on the paperwork burdens associated with the lease form. (Please note that exhibit A is not included here because it merely identifies the area of the lease provided by MMS to the respondent.)

U.S. Department of the Interior
Minerals Management Service

OMB Control Number 1010-xxxx
OMB Approval Expires xx/xx/xxxx

UNITED STATES
DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE

LEASE OF SUBMERGED LANDS FOR ALTERNATIVE ENERGY ACTIVITIES ON THE OUTER CONTINENTAL SHELF

Office
Washington, DC
Lease Number
Rental Rate

This lease is made under the authority of Section 43 U.S.C. 1337, subsection 8(p) of the Outer Continental Shelf Lands Act of August 7, 1953 (43 U.S.C. 1331 et seq.), as amended, (hereinafter called the "Act"), between the United States of America, (hereinafter called "Lessor") acting through the Minerals Management Service, its authorized officer, and _____ (hereinafter, whether one or more, called "Lessee"). In consideration of the promises, terms, conditions, covenants, and stipulations contained herein or attached hereto, the parties mutually agree as follows:

Section 1. **Rights of Lessee.** Lessor hereby grants and leases to Lessee the exclusive right, subject to the terms and conditions of this lease, to conduct the alternative energy activities described in Exhibit "B" on the area of submerged lands of the Outer Continental Shelf (OCS) described in Exhibit "A" hereof, such area hereinafter referred to as the "leased area." Except for the Initial Survey Activities described below, the rights granted Lessee herein are limited to the activities described in Exhibit "B" hereof and confer no preferential right to acquire, develop or operate commercially any alternative energy project on the OCS.

Upon execution of this lease and before submittal of the Project Plan required under Section 8, Lessee is authorized to conduct Initial Survey Activities including geotechnical, geophysical or shallow hazard surveys as Lessee deems necessary to identify the appropriate location on the leased area for placement of any facilities or other structures. The results of such Initial Survey Activities shall be provided to Lessor.

Section 2. Designation of Operator. When there is more than one Lessee, Lessees must designate an Operator. The designated Operator will have authority to act on behalf of all Lessees and to fulfill all of Lessees' obligations under this lease. Lessor must approve the designated Operator before the designated Operator may act on the Lessees' behalf.

Section 3. Reservations to Lessor. All rights in the leased area not expressly granted to Lessee by the Act or this lease are hereby reserved to Lessor. Lessor reserves the right to authorize other uses on the leased area that will not unreasonably interfere with activities authorized under this lease.

Section 4. Effective Date and Lease Term. This lease shall be effective on the first day of the month following the date it is signed by both parties (hereinafter "effective date"). Except as otherwise provided in Section 8 below, this lease shall expire five years from the effective date unless the Lessor, acting at its sole discretion upon the written request of Lessee, extends the term of this lease. Any request for an extension of the lease term shall be submitted to Lessor by Lessee not less than 30 days but not more than 90 days prior to the expiration of the lease. The request for extension of the lease term shall demonstrate to Lessor's satisfaction that Lessee reasonably needs more time to conduct the alternative energy activities described in Exhibit "B."

Section 5. Statutes and Regulations. This lease is issued subject to the Act, all applicable regulations, orders, guidelines, and directives issued pursuant to the Act.

Section 6. Rentals. Lessee shall pay Lessor on or before the first day of each lease year a nonrefundable rental as shown on the face hereof.

Section 7. Notice of Commencement or Termination of Activities. Lessee shall notify Lessor at least 72 hours prior to commencing installation of facilities. Lessee shall notify Lessor any time a facility is out of service for a period greater than 7 days and when the facility is returned to service.

Section 8. Project Plan. All activities in the leased area, except the Initial Survey Activities described in Section 1, shall be conducted in accordance with a Project Plan (hereinafter called the "Plan") prepared by Lessee and submitted to Lessor.

(a) Except for the Initial Survey Activities described in Section 1, Lessee may not conduct activities under this lease until Lessor has acknowledged receipt of the Plan and has raised no objections within 60 calendar days of receipt, or Lessor notifies Lessee that

subsequent modifications to the plan have satisfied Lessor's initial objections.

(b) This lease shall terminate one year following the effective date if prior to that time, (1) Lessee has not submitted to MMS a Plan as provided in this section, or (2) otherwise notified Lessor of the reasons why a Plan has not been submitted. Lessor, at its sole discretion, may grant Lessee additional time to submit a Plan.

(c) The Plan shall include the following information in form and content satisfactory to Lessor:

(1) A description of the proposed activities, including the technology intended to be utilized in conducting activities authorized by this lease and all surveys Lessee intends to conduct;
(2) The surface location and water depth for all proposed facilities to be constructed in the leased area;
(3) General structural and project installation information;
(4) A description of the safety, prevention and environmental protection features or measures that Lessee will use;
(5) A brief description of how facilities on the leased area will be removed and the leased area restored as required by Section 18 below; and
(6) Any other information reasonably requested by Lessor to ensure Lessee's activities on the OCS are conducted in a safe and environmentally sound manner.

(d) Lessee agrees to conduct periodic reviews and inspections of activities under the lease to ensure compliance with the provisions of the Plan and the terms and conditions of this lease.

(e) Any proposed modifications to the Plan shall be submitted to Lessor and Lessor shall have 30 calendar days to raise any objection to the proposed modification prior to implementation.

Section 9. **Compliance.** Lessee shall not conduct any activities on the leased area until it has obtained all necessary governmental approvals. Futhermore, Lessee agrees to conduct all activities in the leased area in accordance with all applicable laws, rules and regulations.

Lessee further agrees that no activities authorized by this lease will be carried out in a manner that: (1) could interfere with or endanger activities or operations under any lease issued or maintained pursuant to the Act or under any other license or approval issued by any Federal agency in accordance with applicable law prior to the issuance of this lease; (2) could cause any undue harm or damage to marine life; (3) could create hazardous or unsafe conditions; (4) could unreasonably interfere with or harm other uses of the leased area; or (5) could adversely affect sites, structures, or objects of historical or archaeological significance without notice to and direction from the Lessor on how to

proceed.

Section 10. Progress Reports.

(a) Lessee shall submit to Lessor a quarterly progress report that shall include a brief narrative of the overall progress since the beginning of the lease term or since the last progress report.

(b) Lessee shall make available to Lessor upon request all studies, surveys, inspections or test reports compiled or completed during the duration of the lease term and three years thereafter and all raw data, analyses and computational models used by Lessee to interpret such data.

(c) At the conclusion of the activities covered by this lease, or at the termination of this lease, whichever comes first, Lessee shall submit a final progress report. The final progress report shall include, at a minimum, a comprehensive narrative of Lessee's activities and results from testing, surveys and inspections.

(d) Lessee shall retain copies of all such progress and other reports for the duration of the lease term and three years thereafter.

Section 11. Confidentiality. To the extent permitted by applicable law, in particular the Freedom of Information Act and implementing regulations, Lessor shall keep confidential all information, including but not limited to studies, surveys, or test reports, received from Lessee for the duration of the lease term and three years thereafter, unless disclosure is agreed to by the lessee(s) and all relevant third parties. The Lessor will follow the procedures set forth in 43 CFR § 2.23 with respect to objections to requests for commercial or financial information. Lessor shall be entitled to retain all reports and similar work product delivered to it by Lessee.

Section 12. Inspections. Lessee shall: (1) allow prompt access to any authorized Federal inspector to the site of any activities conducted pursuant to this lease; and (2) provide any documents and records that are pertinent to occupational or public health, safety, or environmental protection that may be requested by MMS or other authorized Federal inspectors. Lessee shall incorporate these requirements in any contract between Lessee and third parties conducting activities on the leased area.

Section 13. Violations, Suspensions and Cancellations. If Lessee violates any provision of this lease, Lessor may, after giving written notice ordering lessee to cease and remedy all such violations, suspend any further activities of Lessee under this lease. Lessee may continue activities that are necessary to remedy any violation. If Lessee fails to remedy all violations within 30 days after receipt of a suspension notice, Lessor may, by written notice, cancel this lease and take appropriate action to recover all costs incurred by Lessor by reason of such violation(s). Cancellation of this lease due to any violation of the provisions of this lease by Lessee shall not entitle Lessee to

compensation. Lessor, by written notice, may also suspend or cancel this lease when it is necessary (1) to comply with judicial decrees; (2) to respond to a serious threat of imminent harm or injury to human life, or natural, historical or archaeological resources; and (3) to respond to national security or defense requirements.

Section 14. Indemnification. Lessee shall indemnify Lessor for, and hold Lessor harmless from, any claim, including claims for loss or damages suffered or costs or expenses incurred by Lessor arising out of any activities conducted by Lessee or its employees, contractors, subcontractors, or their employees, under this lease whenever such damage, cost or expense results from any breach of this lease by Lessee or its employees, contractors, subcontractors, or their employees, or from the wrongful or negligent act or omission of Lessee or its employees, or Lessee's contractors, subcontractors, or their employees, which causes death, personal injury or damage to property. Lessee shall pay Lessor for such damage, cost, or expense attributable to its breach or negligence or that of its employees, contractors, subcontractors, or their employees within 90 days after a written demand therefore by Lessor.

Section 15. Financial Assurance. Lessee shall maintain at all times a surety bond or other form of financial assurance approved by Lessor in the amount of $300,000 and shall furnish such additional financial assurance as may be required by Lessor if, at any time during the term of this lease, Lessor deems such additional financial assurance to be necessary.

Section 16. Assignment or Transfer of Lease. This lease may not be assigned or transferred in whole or in part without prior written approval of Lessor. Lessor reserves the right, in its sole discretion, to deny approval of any transfer or assignment.

Section 17. Surrender of Lease. Lessee may surrender this lease by filing with Lessor a written relinquishment that shall be effective on the date of filing, subject to the responsibility to remove property and restore the leased area pursuant to section 18.

Section 18. Removal of Property and Restoration of the Leased Area on Termination of Lease. Within a period of 1 year after cancellation, expiration, relinquishment or other termination of this lease, unless Lessor approves a longer period, Lessee shall remove all devices, works and structures from the leased area and restore the leased area to its original condition before issuance of the lease in accordance with the conditions in Exhibit "B." Within 90 days following the removal of property and restoration of the leased area, Lessee shall provide Lessor with a written report summarizing its facility removal and site restoration activities.

Section 19. Debarment Compliance. Lessee shall comply with the Department of the Interior's nonprocurement debarment and suspension regulations as required by 2 CFR Parts 180 and 1400 and shall communicate the requirement to comply with these regulations to persons with whom it does business related to this lease by including this term in its contracts and transactions.

Section 20. Notices. Except for notices required under Section 7, which Lessee may provide orally, all notices or reports provided under the terms of this lease shall be in writing. Notices shall be delivered to the Lease Representative electronically, by hand, by facsimile, or by United States first class mail, adequate postage prepaid, to the specific persons listed below. Any party's address may be changed from time-to-time by such party giving notice as provided above. Until notice of any change of address is delivered as provided above, the last recorded address of either party shall be deemed the address for all notices required under this lease. For all operational matters, notices shall be provided to the party's Operations Representative as well as the Lease Representative.

(a) Lessor's Contact Information

Lease Representative: Operations Representative:

Name:
Title:
Address:
Address:
Phone:
Fax:
E-mail

(b) Lessee's Contact Information

Lease Representative: Operations Representative :

Name:
Title:
Address:
Address:
Phone:
Fax:
E-mail:

	THE UNITED STATES OF AMERICA, Lessor
(Lessee)	
(Signature of Authorized Officer)	**(Signature of Authorized Officer)**
(Name of Signatory)	**(Name of Signatory)**
(Title)	**(Title)**
(Date)	**(Date)**
(Address of Lessee)	

If this lease is executed by a corporation, it must bear the corporate seal.

PAPERWORK REDUCTION ACT OF 1995 (PRA) STATEMENT: The PRA (44 U.S.C. 3501 et seq.) requires us to inform you that we collect this information as part of authorizing respondents to conduct data collection and/or technology testing on the OCS. The MMS uses the information to evaluate and approve or disapprove the adequacy of the equipment and/or procedures to safely perform the proposed activities in an environmentally responsible manner. Responses are required for benefit. Proprietary data are covered under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. Public reporting burden for this form is estimated at 1 hour per response. This includes the time for completing and reviewing the form. Direct comments regarding the burden estimate or any other aspect of this form to the Information Collection Clearance Officer, Mail Stop 4230, Minerals Management Service, 1849 C Street, NW, Washington, DC 20240.

MMS **Form MMS-0001** (January 2008)

EXHIBIT "B"
TECHNOLOGY TESTING AND DEMONSTRATION ACTIVITIES
WAVE AND/OR CURRENT RESOURCES

Lease Number ____

U.S. DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE

LEASE OF SUBMERGED LANDS FOR ALTERNATIVE ENERGY ACTIVITIES ON THE OUTER CONTINENTAL SHELF

Lessor hereby grants to Lessee the right to conduct the following alternative energy activities for wave and/or current resources on the leased area. "Wave and/or current resources" means the ocean waves and/or currents moving across the leased area. These rights include:

(a) constructing, installing, using, upgrading, maintaining, and removing buoys, turbines or other devices, to study wave and/or current flow, motion, frequency, speed, rise and fall, or direction, and other data in order to determine the potential to harness the wave and/or current resources on the leased area for the production of energy;

(b) accessing the leased area for permit applications, site analysis, extraction of soil and water samples, and other geotechnical, geophysical, and meteorological analyses and tests necessary to determine the feasibility of converting the wave and/or current resources to electricity;

(c) employing and testing technology and/or demonstrating Lessee's ability to convert wave and/or current resources to electricity and to collect and transmit that electricity to market, provided, however, that these rights do not include the right to install transmission cables to shore;

(d) any other activities necessary to establish the nature and extent of the wave and/or current resources on the leased area and to establish whether the leased area has sufficient wave and/or current resources for the commercial production and distribution of electricity; and

(e) any activities relating to assessing biological resources, including avian, marine mammal, or other living resources identifiable from the leased area.

Lessee's rights to conduct the aforesaid alternative energy activities are subject to the following stipulations.
Stipulation 1 -

Note: Stipulations will be developed on a case-by-case basis depending upon location, technology utilized and other relevant factors, including site-specific findings from project-specific environmental analyses. The stipulations will also be based on the environmental analysis in the Alternative Energy Alternate Use (AEAU) programmatic Environmental Impact Statement (EIS).

EXHIBIT "B"
DATA COLLECTION ACTIVITIES
WAVE AND/OR CURRENT RESOURCES

Lease Number

U.S. DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE

LEASE OF SUBMERGED LANDS FOR ALTERNATIVE ENERGY ACTIVITIES ON THE OUTER CONTINENTAL SHELF

Lessor hereby grants to Lessee the right to conduct the following alternative energy activities for wave and/or current resources on the leased area. "Wave and/or current resources" means the ocean waves and/or currents moving across the leased area. These rights include:

(a) constructing, installing, using, upgrading, maintaining, and removing buoys, turbines or other devices, to study wave and/or current flow, motion, frequency, speed, rise and fall, or direction, and other data in order to determine the potential to harness the wave and/or current resources on the leased area for the production of energy;

(b) accessing the leased area for permit applications, site analysis, extraction of soil and water samples, and other geotechnical, geophysical and meteorological analyses and tests necessary to determine the feasibility of converting the wave and/or current resources to electricity;

(c) any other activities necessary to establish the nature and extent of the wave and/or current resources on the leased area and to establish whether the leased area has sufficient wave and/or current resources for the commercial production and distribution of electricity; and

(d) any activities relating to assessing biological resources, including avian, marine mammal, or other living resources identifiable from the leased area.

Lessee's rights to conduct the aforesaid alternative energy activities are subject to the following stipulations.

Stipulation 1 -

Note: Stipulations will be developed on a case-by-case basis depending upon location, technology utilized and other relevant factors, including site-specific findings from project-specific environmental analyses. The stipulations will also be based on the environmental analysis in the Alternative Energy Alternate Use (AEAU) programmatic Environmental Impact Statement (EIS)

EXHIBIT "B"
DATA COLLECTION ACTIVITIES
WIND RESOURCES

Lease Number ____

U.S. DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE

LEASE OF SUBMERGED LANDS FOR ALTERNATIVE ENERGY ACTIVITIES ON THE OUTER CONTINENTAL SHELF

Lessor hereby grants to Lessee the right to conduct the following alternative energy data collection activities for wind resources on the leased area. "Wind resources" means the wind moving across the leased area. These rights include:

(a) constructing, installing, using, upgrading, maintaining, and removing meteorological towers to study wind speed, wind direction, and other meteorological data in order to determine the potential of the wind resources on the leased area for the production of energy;

(b) accessing the leased area for permit applications, site analysis, extraction of soil and water samples, and other geotechnical, geophysical and hydrological analyses and tests necessary to determine the feasibility of converting the wind resources to electricity;

(c) any other activities necessary to establish the nature and extent of the wind resources on the leased area and to establish whether the leased area has sufficient wind resources for the commercial production and distribution of electricity; and

(d) any activities relating to assessing biological resources, including avian, marine mammal, or other living resources identifiable from the leased area.

Lessee's rights to conduct the aforesaid alternative energy activities are subject to the following stipulations:

Stipulation 1 -

Note: Stipulations will be developed on a case-by-case basis depending upon location, technology utilized and other relevant factors, including site-specific findings from project-specific environmental analyses. The stipulations will also be based on the environmental analysis in the Alternative Energy Alternate Use (AEAU) programmatic Environmental Impact Statement (EIS).

MMS Information Collection Clearance Officer: Arlene Bajusz (202) 208-7744.

Dated: March 26, 2008.

Randall B. Luthi,

Director, Minerals Management Service.

[FR Doc. E8–8391 Filed 4–18–08; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before April 5, 2008. Pursuant to section 60.13 of 36 CFR Part 60, written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by May 6, 2008.

J. Paul Loether,

Chief, National Register of Historic Places/ National Historic Landmarks Program.

DISTRICT OF COLUMBIA

District of Columbia

Garden Club of America Entrance Markers at Wisconsin Avenue (Garden Club of America Entrance Markers in Washington, D.C. MPS), Wisconsin Ave. at Western Ave., Washington, 08000394

GEORGIA

Lee County

Leesburg Depot, 106 Walnut Ave. N., Leesburg, 08000395

Pike County

Barker, William, Whiskey Bonding Barn, 9450 Old Zebulon Rd., Molena, 08000396

Terrell County

Martin Elementary School, 608 Church St., Bronwood, 08000397

ILLINOIS

Kane County

Elizabeth Place, 316 Elizabeth Pl., Geneva, 08000398

Lake County

Westover Road Non-Commissioned Officers' Housing Historic District, 339–355 Westover Rd., Highwood, 08000399

Piatt County

Monticello Courthouse Square Historic District, Roughly bounded by Market, RR tracks, N. Hamilton, Independence & Marion Sts., Monticello, 08000400

MASSACHUSETTS

Essex County

Park Street Historic District, Park St. & Park Sq., Peabody, 08000401

MINNESOTA

Hennepin County

First National Bank—Soo Line Building, 101 S. 5th St., Minneapolis, 08000402

Martin County

United States Post Office, Fairmont, 51–55 Downtown Plz., Fairmont, 08000403

MISSOURI

St. Louis Independent City

Nooter Corporation Building, 1400 S. 3rd St., St. Louis (Independent City), 08000404

NEW YORK

Delaware County

Rock Valley School, 9598 Rock Valley Rd., Rock Valley, 08000406

Erie County

Williamsville Junior and Senior High School, 5950 Main St., Williamsville, 08000407

Essex County

Lake Champlain Bridge, NY 903, VT 17, Crown Point, 08000408

Orange County

Patton, James ''Squire,'' House, NY 207 W. of jct. with Temple Hill Rd., New Windsor, 08000409

Oswego County

Standard Yarn Company Building, 317 W. 1st St., Oswego, 08000410

Steuben County

Hammondsport Union Free School, 41 Lake St., Hammondsport, 08000411

NORTH CAROLINA

Mecklenburg County

Grace A.M.E. Zion Church, 219–223 S. Brevard St., Charlotte, 08000412

Rutherford County

Alexander Manufacturing Company Mill Village Historic District, Roughly bounded by Victory & Wilson Drs., Allen & S. Broadway Sts., Forest City, 08000413

Wake County

Ivey—Ellington House, (Wake County MPS) 135 W. Chatham St., Cary, 08000414

Wilkes County

Finley, Thomas B., House, 1014 E St., North Wilkesboro, 08000415

OREGON

Multnomah County

Jorgensen, Victor H. and Marta, House, 2643 SW. Buena Vista Dr., Portland, 08000405

VIRGINIA

Albemarle County

Kenridge, 912 Marsh Ln., Charlottesville, 08000416

Amherst County

Edge Hill, 1380 Edgehill Plantation Rd., Gladstone, 08000418

Glebe, The, 156 Patrick Henry Hwy., Amherst, 08000419

Covington Independent City

Covington High School, 530 S. Lexington Ave., Covington (Independent City), 08000417

Culpeper County

Pitts Theatre, 303–307 S. Main St., Culpeper, 08000420

Franklin County

Rocky Mount Historic District (Boundary Increase), Orchard Ave. between E. Court & Patterson Sts., Rocky Mount, 08000421

Northampton County

Arlington Archaeological Site, Address Restricted, Capeville, 08000422

Page County

Page County Bridge No. 1990, US 340, Overall, 08000423

Richmond Independent City

Jackson Ward Historic District (Boundary Increase), 400 blks. 1st, 2nd, & 3rd Sts., 106–108 E. Marshall, 411–413 N. Adams St., Richmond (Independent City), 08000424

Roanoke Independent City

Salem Avenue—Roanoke Automotive Commercial Historic District (Boundary Increase), 500 & 600 blks. Campbell Ave. & 700 blk. Patterson Ave., Roanoke (Independent City), 08000425

York County

Whitaker's Mill Archaeological Complex, Address Restricted, Williamsburg, 08000426

[FR Doc. E8–8510 Filed 4–18–08; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 1029–0055

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM or we) are announcing our intention to request renewed approval for the collection of information for 30 CFR Part 877—Rights

of Entry. The collection described below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection request describes the nature of the information collection and the expected burdens and costs.

DATES: OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, your comments should he submitted to OMB by May 21, 2008, in order to be assured of consideration.

ADDRESSES: Your comments should be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Department of the Interior Desk Officer, via e-mail at *OIRA_Docket@omb.eop.gov*, or by facsimile to (202) 395–6566. Also, please send a copy of your comments to John Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW., Room 202—SIB, Washington, DC 20240, or electronically to *jtrelease@osmre.gov.* Please reference 1029–0055 in your submission.

FOR FURTHER INFORMATION CONTACT: To receive a copy of the information collection request contact John Trelease on (202) 208–2783, or electronically at *jtrelease@osmre.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. We have submitted a request to OMB to approve the collection of information for 30 CFR Part 877—Rights of Entry. We are requesting a 3-year term of approval for this information collection activity.

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 number for this collection of information is displayed in 30 CFR 877.10 (1029–0055).

As required under 5 CFR 1320.8(d), we published a **Federal Register** notice seeking public comments on this collection of information on February 5, 2008 (73 FR 6738). No comments were received. This notice gives you an additional 30 days in which to comment on the following information collection activity:

Title: 30 CFR 877—Rights of Entry.

OMB Control Number: 1029–0055.

Summary: This regulation establishes procedures for non-consensual entry upon private lands for the purpose of abandoned mine land reclamation activities or exploratory studies when the landowner refuses consent or is not available.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: State abandoned mine land reclamation agencies.

Total Annual Responses: 12.

Estimated Time per Response: 2.

Total Annual Burden Hours: 24.

Total Annual Non-wage Costs: $1,080 for publication costs.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the addresses listed under **ADDRESSES**. Please refer to the appropriate OMB control number in all correspondence.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: April 11, 2008.

John R. Craynon,

Chief, Division of Regulatory Support.

[FR Doc. E8–8434 Filed 4–18–08; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

April 15, 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:* OMB Desk Officer for the Employment and Training Administration (ETA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7316/Fax: 202–395–6974 (these are not a 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: Employment and Training Administration.

Type of Review: Extension without of a currently approved collection.

Title of Collection: Internal Fraud Activities.

OMB Control Number: 1205–0187.

Agency Form Number: ETA–9000.

Affected Public: State Governments.

Estimated Number of Respondents: 53.

Estimated Total Annual Burden Hours: 159.

Estimated Total Annual Costs Burden: $0.

Description: Collection of the ETA–9000 data helps to provide information for the continuing evaluation of the Internal Security program for Unemployment Insurance. The time lag

between detection of a vulnerability and implementation of a safeguard to overcome or correct the vulnerability puts the system at risk. The availability of data to evaluate the effectiveness of the safeguard can help shorten an agency's response in safeguarding automated areas of operation. For additional information, see related notice published at 73 FR 2940 on January 16, 2008.

Agency: Employment and Training Administration.

Type of Review: Revision of a currently approved collection.

Title of the Collection: National Agriculture Workers Survey (NAWS).

OMB Control Number: 1205–0453.

Form Number: None.

Affected Public: Individuals or households.

Estimated Number of Respondents: 4,008.

Estimated Total Annual Burden Hours: 3,411.

Estimated Total Annual Costs Burden: $0.

Description: NAWS provides an understanding of the manpower resources available to U.S. agriculture. It is the national source of information on the demographic, occupational health and employment characteristics of hired crop workers.

For additional information, see related notice published at 72 FR 50983 on September 5, 2007.

Darrin A. King,

Acting Departmental Clearance Officer.

[FR Doc. E8–8539 Filed 4–18–08; 8:45 am]

BILLING CODE 4510–FM–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

April 15, 2008.

The Department of Labor (DOL) hereby announces the submission of the following public information collection request (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 this 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: 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 a 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: Commercial Diving Operations (29 CFR Part 1910, Subpart T).

OMB Control Number: 1218–0069.

Agency Form Number: None.

Affected Public: Private sector—business or other for-profit.

Estimated Number of Respondents: 3,000.

Estimated Total Annual Burden Hours: 205,397.

Estimated Total Annual Costs Burden: $2,765.

Description: The information collection requirements of 29 CFR Part 1910, Subpart T are directed toward assuring the safety and health of divers exposed to hyperbaric conditions during and after undersea activities. Also, the required recordkeeping is intended to bring about a safe workplace and assure the safety of divers. For additional information, see related notice published at 73 FR 6744 on February 5, 2008.

Darrin A. King,

Acting Departmental Clearance Officer.

[FR Doc. E8–8540 Filed 4–18–08; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Testing, Evaluation and Approval of Mining Products

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

DATES: Submit comments on or before June 20, 2008.

ADDRESSES: Send comments to Debbie Ferraro, Management Services Division, 1100 Wilson Boulevard, Room 2141, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on computer disk, or via E-mail to *Ferraro.Debbie@DOL.GOV*. Ms. Ferraro can be reached at (202) 693–9821 (voice), or (202) 693–9801 (facsimile).

FOR FURTHER INFORMATION CONTACT: Contact the employee listed in the **ADDRESSES** section of this notice.

SUPPLEMENTARY INFORMATION:

I. Background

The Mine Safety and Health Administration (MSHA) is responsible for the inspection, testing, approval and certification, and quality control of mining equipment and components, materials, instruments, and explosives used in both underground and surface coal, metal, and nonmetal mines. Title 30 CFR, parts 6 through 36 contain

procedures by which manufacturers may apply for and have equipment approved as ''permissible'' for use in mines.

II. Desired Focus of Comments

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection requirement related to testing, evaluation, and approval of Mining Products. MSHA is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of MSHA's functions, including whether the information has practical utility;
- Evaluate the accuracy of MSHA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Address 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)to minimize the burden of the collection of information on those who are to respond.

A copy of the proposed information collection request can be obtained by contacting the employee listed in the **ADDRESSES** section of this notice or viewed on the Internet by accessing the MSHA home page (*http://www.msha.gov/*) and selecting ''Rules and Regs'', and then selecting ''Fed Reg Docs.''

III. Current Actions

Title 30 CFR parts 6 through 36 require that an investigation leading to approval or certification will be undertaken by the A&CC at the MSHA only pursuant to a written application accompanied by prescribed drawings and specifications identifying the piece of equipment. This information is used by engineers and scientists to evaluate the design in conjunction with tests to assure conformance to standards prior to approval for use in mines.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Permissible Equipment Testing.

OMB Number: 1219–0066.

Affected Public: Business or other for-profit.

Respondents: 262.

Responses: 733.

Total Burden Hours: 4302.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $1,671,381.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated at Arlington, Virginia, this 16th day of April, 2008.

David L. Meyer,

Director, Office of Administration and Management.

[FR Doc. E8–8541 Filed 4–18–08; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2007–0053]

Nationally Recognized Testing Laboratories; Proposed Satellite Notification and Acceptance Program

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: The Occupational Safety and Health Administration (OSHA) requests comment on a new segment being proposed under its Nationally Recognized Testing Laboratory (NRTL) Program. This segment is called the Satellite Notification and Acceptance Program, and participation by NRTLs in the program is voluntary. The description for this program specifies the criteria and conditions under which any NRTL may control and audit certain facilities in order to perform particular functions at those facilities.

DATES: You must submit information or comments by the following dates:

- *Hard copy:* postmarked or sent by May 21, 2008.
- *Electronic transmission or facsimile:* sent by May 21, 2008.

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

Electronically: You may submit comments electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal. Follow the instructions online for making electronic submissions.

Fax: If your submissions, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger or courier service: You must submit three copies of your comments to the OSHA Docket Office, Docket No. OSHA–2007–0053, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, messenger and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m.–4:45 p.m., *e.t.*

Instructions: All submissions must include the Agency name and the OSHA docket number (OSHA Docket No. OSHA–2007–0053). Submissions, including any personal information you provide, are placed in the public docket without change and may be made available online at *http://www.regulations.gov*.

Docket: To read or download submissions or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket are listed in the *http://www.regulations.gov* index, however, some information (*e.g.*, copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office.

Extension of Comment Period: Submit requests for extensions concerning this notice to the Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–3655, Washington, DC 20210. Or, fax to (202) 693–1644.

FOR FURTHER INFORMATION CONTACT: MaryAnn Garrahan, Director, Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–3655, Washington, DC 20210, or phone (202) 693–2110. Our Web page includes information about the NRTL Program (see *http://www.osha.gov* and select ''N'' in the site index).

SUPPLEMENTARY INFORMATION:

Introduction

The Occupational Safety and Health Administration (OSHA) is proposing a new operational segment under its Nationally Recognized Testing Laboratory (NRTL) Program; it will be called the Satellite Notification and Acceptance Program (SNAP). This new segment would allow NRTLs to use facilities referred to as ''SNAP sites,'' which they control and audit, in order to perform particular functions necessary in the NRTL's testing and certification operations. These functions

are called ''certification functions'' in this notice. NRTLs would need to meet certain criteria and conditions to be approved by OSHA for SNAP.

SNAP would become the NRTL Program's ninth ''supplemental program''; the supplemental programs are one of the three elements of the NRTL scope of recognition. In general, these supplemental programs permit a qualified NRTL to use the services or activities of other parties or facilities for purposes of testing and certifying products. The initial eight programs were formally established by OSHA for the NRTL Program through publication of their description in the **Federal Register** (see 60 FR 12980, March 9, 1995). That notice set forth the criteria and conditions that an NRTL must meet to use a particular program. More information about supplemental programs is given later in this notice and is also available under Chapter 2 of the NRTL Program Policies, Procedures, and Guidelines (referred to as NRTL Program Directive or NRTL Directive, for short), which may be found at *http://www.osha.gov/dts/otpca/nrtl/index.html*. Use of any of these supplemental programs by any NRTL is voluntary.

In this notice, we provide background about the NRTL Program, for those unfamiliar with the program, and then follow with the description of SNAP. The detailed program description of SNAP is available for viewing or downloading at the above Web page link.

This notice is published to provide the public with an opportunity to comment on OSHA's pending action. This action does not change any of the requirements for NRTLs, found under 29 CFR 1910.7, or any of the OSHA requirements for approval of particular products by NRTLs. SNAP is an internal policy, which would be made part of the NRTL Directive and thus become an NRTL Program policy. The Agency is requesting public comment on this action in the interest of providing a formal opportunity for input by NRTLs and the public. OSHA obtained informal comments from NRTLs on a draft version of SNAP prior to publication of this notice.

Background on NRTLs

Many of OSHA's standards require that certain types of workplace equipment be approved (*i.e.*, tested and certified) by an NRTL. For example, 29 CFR 1910.303(a) (read together with the definitions of ''approved'' and ''acceptable'' in 29 CFR 1910.399) generally requires such approval for electrical equipment or products. OSHA's requirement for approval helps to ensure that products are safe for use in the workplace.

NRTLs are qualified organizations that are recognized under the Agency's NRTL Program as meeting the requirements in 29 CFR 1910.7 to perform independent (*i.e.*, third-party) product safety testing and certification. To be recognized by OSHA as an NRTL, an organization must: (1) Have the appropriate capability to test and evaluate products for workplace safety purposes; (2) be completely independent of the manufacturers, vendors, and major users of the products for which OSHA requires certification; (3) have internal programs that ensure proper control of the testing and certification process; and (4) establish effective reporting and complaint handling procedures (29 CFR 1910.7(b)).

OSHA's NRTL recognition process involves a thorough analysis of an organization's policies and procedures to ensure that it meets all of the requirements of 29 CFR 1910.7. OSHA also performs a comprehensive on-site review of the applicant's testing and certification facilities. After initial recognition, the Program staff also conduct annual on-site audits to ensure that the NRTLs adequately perform their testing and certification activities and maintain the quality of those operations.

The recognition process is described in Appendix A to 29 CFR 1910.7, which is further explained in Chapters 2 through 6 of the NRTL Program Directive (CPL 01–00–003—CPL 1–0.3). All of these documents are available through the Program's Web site (*see http://www.osha.gov/dts/otpca/nrtl/index.html*).

Each NRTL is approved for a scope of recognition which identifies: (1) The types of products the NRTL may approve, (2) the NRTL's ''recognized sites'' which are the NRTL's wholly-owned sites that can perform the full range of product testing and certification activities necessary in approving those products, and (3) ''supplemental programs'' through which the NRTL can use other resources in performing activities necessary for product testing and certification. To date, the ''supplemental programs'' mainly have allowed the NRTL's recognized sites to accept (*i.e.*, use) other-party product testing, specifically testing performed by non-NRTL independent testing labs and by product manufacturers.

As indicated above, to be recognized, the NRTL must be capable of performing two key operations in approving products: testing and certification or, more broadly, operating a product safety-testing program and a product-certification program. The latter program, for purposes of OSHA requirements, consists of listing/labeling and follow-up inspection programs. While both operations are necessary for approval, the NRTL's certification program is fundamentally important to the control of the approval process. Not only does this program involve the issuance of the initial certification, but through it the NRTL also gains assurance that all manufactured units of the product have the same safety features as the unit initially tested and certified.

Although OSHA does not require NRTLs to perform all testing themselves, our policy has restricted them to perform certain ''certification functions'' only at their recognized sites. The rationale for such a limitation was that OSHA initially evaluated the NRTL's resources and capabilities to perform these functions at those specific sites and then monitored the NRTL's performance of these critical functions during its audits of those sites. However, responding to industry needs to perform these functions at other locations, OSHA would adopt a new NRTL Program policy allowing NRTLs to use special unrecognized sites to perform certification functions and, if qualified, product testing too. We would allow this use by implementing a new supplemental program, called the Satellite Notification and Acceptance Program (SNAP). Before describing the new program, and the functions allowed under it, we further explain what we mean by ''supplemental programs.''

As noted above, these supplemental programs allow the NRTLs to use other qualified parties to perform a particular activity, and to date most of these programs have allowed NRTLs to accept (*i.e.*, use) other-party product testing. To be approved to use a program, NRTLs must apply to OSHA which determines if they meet the applicable criteria or conditions for the program. Approval to use any program is unrelated to OSHA's determination of whether an NRTL meets the requirements for recognition under 29 CFR 1910.7. The supplemental programs merely serve as a means for OSHA to ensure that NRTLs engage in certain activities only if they have met certain criteria or conditions. Use of supplemental programs by any NRTL is voluntary.

Background on Relevant NRTL Program Policy and New Program Segment

When OSHA first implemented these supplemental programs, it allowed long-

standing practices of the product testing and certification industry but defined the necessary minimum elements for their use. By doing this, OSHA improved the effectiveness and uniform application of these practices by all NRTLs and assured that they would, in testing and certifying products, properly utilize the resources provided by other parties. Use of a supplemental program often reduces the time and cost necessary for product approval, but the NRTL must still exercise adequate control to ensure that other parties are performing their testing or other activities appropriately.

OSHA has for many years allowed NRTLs to use testing performed by other NRTLs or by non-recognized facilities (*i.e.*, satellites) of the NRTL, again a practice that was common in the industry. The new supplemental program being proposed today basically expands the role that satellites perform in the NRTL's approval process.

In adopting this new program, OSHA would allow NRTLs to engage in activities that address challenges they face in testing and certifying products but, similar to other programs, defining minimum criteria and conditions for these activities. The proposed program would permit a qualified NRTL to perform certification activities at many more locations than OSHA currently allows. These additional locations could also qualify testing locations and accept test and evaluation data, activities that OSHA had to date restricted to recognized sites. This program also could potentially expedite any NRTL's approval activities. Allowing the program is a measured approach since we do so with the clear objectives of maintaining the effectiveness of our NRTL monitoring and assuring that the safety of NRTL approved products is not compromised.

Like all supplemental programs, the SNAP is yet another segment within the NRTL Program. Similar to these programs, the NRTL must apply to OSHA and meet very specific criteria before receiving approval to use SNAP. The SNAP Program Description describes these criteria, which specify a series of controls and safeguards for both the NRTL and OSHA. As another similarity, to use any particular site as a satellite under SNAP (which we call a SNAP site), the NRTL must qualify it to ensure that the site can perform one or more of the allowable functions covered under SNAP. However, these SNAP sites would not be recognized sites under the OSHA NRTL Program, and thus would not be considered in any determination regarding recognition of the NRTL.

In contrast to those other programs, OSHA would audit the SNAP sites and the NRTL site that centrally manages its SNAP operations; the Agency does not audit facilities which the NRTL qualifies under one of the existing programs, and would not audit those qualified by SNAP sites, either. In addition, OSHA could drop any NRTL or satellite from SNAP if warranted due to noncompliance with any conditions. Any NRTL not approved to use SNAP must perform the functions below only at its recognized site(s).

NRTLs can always apply to OSHA to ''convert'' any of their satellites or SNAP sites to a recognized site. We would process this application as a regular scope expansion, and thus grant it if the site met the necessary requirements.

The functions that could be performed at a qualified SNAP site, each briefly explained, are:

1. *Qualify sites under Programs 2 through 7, or parties under Program 9, which are all described in a March 9, 1995, FR notice (60 FR 12980).*

Programs 2 through 7 involve the NRTL's acceptance or use of testing data or product evaluations from other parties, specifically independent labs and product manufacturers. Under these programs, NRTLs must ''qualify'' each location (or site) generating the data or evaluation. In qualifying it, NRTLs ensure that a site meets the NRTL's internal criteria for the capability to perform the work to be accepted or used. Program 9 involves the NRTL using other parties to perform services, such as calibration of equipment or follow-up inspections. NRTLs qualify each supplier to ensure that it meets the NRTL's internal criteria for providing the specific service. To date, only recognized sites have performed such activities, but SNAP sites could too.

2. *Accept data under Programs 2 through 8 which are described in the March 9, 1995, FR notice (60 FR 12980).*

In accepting testing data or product evaluations under Programs 2 through 8 (see above), the NRTL must have the appropriate technical personnel for review of the adequacy and accuracy of the data. The NRTL must have clear procedures on how to conduct the review. Only recognized sites and SNAP sites having these elements could perform the acceptance.

3. *Maintain or provide the only access to primary product test and evaluation files or records for any of the Programs.*

The NRTL must have and make available to OSHA the primary product test and evaluation files or records for its activities. Such documents are essential to proper performance and review by the NRTL of its activities and are fundamental to OSHA's audit of NRTLs. Current technology allows many of these records to be converted to electronic medium and made available remotely. In addition, some records can be stored by others or at locations remote from the site where they were originally generated. In short, a recognized or SNAP site must either maintain or provide access to these records or files.

4. *Perform the final technical review or make the final decision on certification of a product.*

Performing the final technical review or making the final decision on certification of a product is the culmination of the technical process for product certification. This review or decision must be made by well-qualified technical staff and represents the assurance that the product meets the applicable provisions of the relevant test standard. Such review is necessary before the final decision can be made. Only recognized sites and SNAP sites having this capability could perform this function.

5. *Finally, under SNAP, OSHA would allow SNAP sites that are wholly owned by the NRTL to authorize the use of the NRTL's mark.*

OSHA has long considered the authorization by the NRTL to use its mark as equivalent to the final decision on certification and thus believes it is appropriate to limit this activity to SNAP sites that are wholly owned by the NRTL. The NRTL should adequately control this function since it should only occur simultaneously or concurrently with the final decision on certification.

Acceptance of Applications and Final Notice for SNAP

OSHA would begin accepting applications from NRTLs for using SNAP beginning 60 days from the date of publication of the **Federal Register** notice announcing the Agency's formal implementation of SNAP. Following publication, we will invite Nationally Recognized Testing Laboratories and applicants for recognition to apply for approval to use the SNAP. The program description, and a letter sent to NRTLs concurrently with publication of this notice, is available through *http://www.osha-slc.gov/dts/otpca/nrtl/index.html*, the main Web site for the NRTL Program.

OSHA welcomes public comments on its proposal to adopt SNAP, including any suggested changes to SNAP or any alternative that is equivalent to it. Your comments should consist of pertinent written documents and exhibits. Should

you need more time to comment, you must request it in writing, including reasons for the request. OSHA must receive your written request for extension at the address provided above no later than the last date for comments. OSHA will limit any extension to 30 days, unless the requester justifies a longer period. You may obtain or review documents related to this notice, as received, by contacting OSHA's Docket Office (see **ADDRESSES** section above). Docket No. OSHA–2007–0053 contains all materials in the record concerning OSHA's NRTL SNAP Program.

OSHA will review all timely comments and determine whether any of them merit modification of the elements of SNAP or delay in its implementation.

Signed at Washington, DC, this 15th day of April, 2008.

Edwin G. Foulke, Jr.,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. E8–8430 Filed 4–18–08; 8:45 am]

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MILLENNIUM CHALLENGE CORPORATION

[MCC FR 08–03]

Notice of Quarterly Report (October 1, 2007—December 31, 2007)

AGENCY: Millennium Challenge Corporation.

SUMMARY: The Millennium Challenge Corporation (MCC) is reporting for the quarter October 1, 2007 through December 31, 2007 with respect to both assistance provided under Section 605 of the Millennium Challenge Act of 2003 (Pub. L. 108–199, Division D (the Act)), and transfers or allocations of funds to other federal agencies pursuant to Section 619(b) of the Act. The following report shall be made available to the public by means of publication in the **Federal Register** and on the Internet Web site of the MCC (*http://www.mcc.gov*) in accordance with Section 612(b) of the Act.

ASSISTANCE PROVIDED UNDER SECTION 605

Projects	Obligated	Objectives	Cumulative disbursements	Measures
Country: Madagascar Year: 2008 Entity to which the assistance is provided: MCA Madagascar Total Quarterly Disbursement: $0				
Land Tenure Project ..	$37,803,000	Increase Land Titling and Security.	$4,308,910	Legislative proposal reflecting the National Land Tenure Program submitted to Parliament and passed. Number of land disputes reported and resolved in the target zones and sites of implementation. Percentage of land documents inventoried, restored, and/or digitized. Average time and cost required to carry out property transactions. Percent of reported land conflicts resolved on titled land in zone 3, 4, 5 during the title regularization operations Percentage of land in the zones that is demarcated and ready for titling.
Finance Project	$35,888,000	Increase Competition in the Financial Sector.	$3,599,784	The number of savings accounts and outstanding value of accounts from primary banks. Maximum check clearing delay. Volume of funds in payment system and number of transactions. Increased public awareness of new financial instruments as measured by surveys within intervention zones and large towns. The amount of government debt issued with maturities in excess of 52 weeks. The number of new individual investors buying government debt securities. The number of bank branches of the Central Bank of Madagascar capable of accepting auction tenders. Percentage of all loans included in the central database.
Agricultural Business Investment Project.	$17,683,000	Improve Agricultural Projection Technologies and Market Capacity in Rural Areas.	$4,819,510	Number of rural producers receiving or soliciting information from Agricultural Business Centers about the opportunities. Intervention zones identified and description of beneficiaries within each zone submitted. Number of visitors receiving information from National Coordinating Center with respect to business opportunities.

ASSISTANCE PROVIDED UNDER SECTION 605—Continued

Projects	Obligated	Objectives	Cumulative disbursements	Measures
				Change in farm income due to improved production and marketing practices. Change in enterprise income due to improved production and marketing practices. Number of farmers and business employing technical assistance received.
Program Administration* and Control, Monitoring and Evaluation.	$18,399,000	.....	$9,361,121	
Pending subsequent reports**.	.....	.....	$640,940	
Country: Honduras Year: 2008 Quarter 1 Total Obligation: $215,000,000 Entity to which the assistance is provided: MCA Honduras Total Quarterly Disbursement: $3,952,445				
Rural Development Project.	$70,687,000	Increase the productivity and business skills of farmers who operate small and medium-size farms and their employees.	$9,461,696	Increase in farm income resulting from Rural Development Project. Funds lent by MCA-Honduras to financial institutions. Increase in employment income resulting from Rural Development Project. Number of Program farmers harvesting high-value horticulture crops. Number of hectares harvesting high-value horticulture crops.
Transportation Project	$127,208,000	Reduce transportation costs between targeted production centers and national, regional and global markets.	$1,929,507	Freight shipment cost from Tegucigalpa to Puerto Cortes. Price of basic food basket. Number of days per year road is passable.
Program Administration* and Control, Monitoring and Evaluation.	$17,105,000	.....	$2,376,136	
Pending subsequent reports**.	.....	.....	$1,577,787	
Country: Cape Verde Year: 2008 Entity to which the assistance is provided: MCA Cape Verde Total Quarterly Disbursement: $0				
Watershed and Agricultural Support.	$10,848,630	Increase agricultural production in three targeted watershed areas on three islands.	$291,362	Increase in horticultural productivity. Increase in annual income. Value-added for farms and agribusiness.
Infrastructure Improvement.	$78,760,208	Increase integration of the internal market and reduce transportation costs.	$6,154,186	Volume of goods shipped between Praia and other islands. Mobility Ratio: Percentage of beneficiary population who take at least 5 trips per month. Savings on transport costs from improvements.
Private Sector Development.	$7,200,000	Spur private sector development on all islands through increased investment in the priority sectors and through financial sector reform.	$14,641	Value added in priority sectors above current trends. Volume of private investment in priority sectors above current trends.
Program Administration* and Control, Monitoring and Evaluation.	$13,269,650	.....	$3,775,862	
Pending subsequent reports**.	.....	.....	$3,694,566	

ASSISTANCE PROVIDED UNDER SECTION 605—Continued

Projects	Obligated	Objectives	Cumulative disbursements	Measures
Country: Nicaragua Year: 2008 Quarter 1 Total Obligation: $175,000,000 Entity to which the assistance is provided: MCA Nicaragua Total Quarterly Disbursement: $4,669,211				
Property Regularization Project.	$26,400,000	Increase investment by strengthening property rights.	$1,358,563	Value of investment on land. Value of urban land. Value of rural land. Number of days to conduct a land transaction. Total cost to conduct a land transaction.
Transportation Project	$92,800,000	Reduce transportation costs between Leon and Chinandega and national, regional and global markets.	$2,573,281	Price of a basket of goods. Travel Time.
Rural Business Development Project.	$33,500,000	Increase the value added of farms and enterprises in the region.	$3,997,215	Annual percentage increase in value-added of clients of business office. Number of jobs created. Number of program farm plots harvesting higher-value crops or reforesting under improvement of Water Supply Activities.
Program Administration,* Due Diligence, Monitoring and Evaluation.	$22,300,000	.....	$4,169,032	
Pending subsequent reports**.	.....	.....	$2,256,236	
Country: Georgia Year: 2008 Quarter 1 Total Obligation: $294,693,400 Entity to which the assistance is provided: MCA Georgia Total Quarterly Disbursement: $8,618,845				
Regional Infrastructure Rehabilitation.	$211,700,000	Key Regional Infrastructure Rehabilitated.	$16,722,162	Reduction in Akhalkalaki-Ninotsminda-Teleti journey time. Reduction in vehicle operating costs. Increase in internal regional traffic volumes. Decreased technical losses in gas through the main North-South pipeline. Reduction in the production of greenhouse gas emissions measured in tons of CO_2 equivalent. Increased collection rate of the Georgian Gas Company (GOGC). Number of household beneficiaries served by Regional Infrastructure Development projects. Actual operations and maintenance expenditures.
Regional Enterprise Development.	$47,500,000	Enterprises in Regions Developed.	$6,190,868	Increase in annual revenue in portfolio companies. Increase in number of portfolio company employees and number of local suppliers. Increase in portfolio companies' wages and payments to local suppliers. Jobs created. Increase in aggregate incremental net revenue to project assisted firms. Direct household net income. Direct household net income for market information initiative beneficiaries. Number of beneficiaries.
Program Administration,* Due Diligence, Monitoring and Evaluation.	35,493,400	.....	$7,395,795	
Pending subsequent reports**.	.....	.....	$8,347,230	

ASSISTANCE PROVIDED UNDER SECTION 605—Continued

Projects	Obligated	Objectives	Cumulative disbursements	Measures
Country: Vanuatu Year: 2008 Quarter 1 Total Obligation: $65,690,000 Entity to which the assistance is provided: MCA Vanuatu Total Quarterly Disbursement: $0				
Transportation Infrastructure Project.	$60,615,232	Facilitate transportation to increase tourism and business development.	$63,685	Number of Tourists. Number of days per year road is closed. Number of S-W Bay, Malekula flights cancelled per year due to flooding. Vessel wait time at wharf.
Program Administration,* Due Diligence, Monitoring and Evaluation.	$5,074,768	.....	$1,608,111	
Pending subsequent reports**.	.....	.....	$334,812	
Country: Armenia Year: 2008 Quarter 1 Total Obligation: $235,650,000 Entity to which the assistance is provided: MCA Armenia Total Quarterly Disbursement: $3,327,390				
Irrigated Agriculture Project (Agriculture and Water).	$145,690,000	Increase agricultural productivity Improve and Quality of Irrigation.	$5,634,541	Increase in hectares covered by high value added horticultural and fruit crops. Percentage of respondents satisfied with irrigation services. Share of Water User Association water charges as percentage of Water User Association annual operations and maintenance costs. Number of farmers using improved on-farm water management practices. Annual increase in irrigated land in Project area. State budget expenditures on maintenance of irrigation system. Value of loans provided under the project.
Rural Road Rehabilitation Project.	$67,100,000	Better access to economic and social infrastructure.	$1,378,446	Government budgetary allocations for routine maintenance of the entire road network Average daily traffic in Project area. Kilometers of Package 1 road sections rehabilitated.
	.....			Kilometers of Package 2 road sections rehabilitated.
				Kilometers of Package 3 road sections rehabilitated.
Program Administration,* Due Diligence, Monitoring and Evaluation.	$22,870,000	.....	$2,732,235	
Pending subsequent reports **.	.....	.....	$1,515,257	
Country: Benin Year: 2008 Quarter 1 Total Obligation: $307,298,040 Entity to which the assistance is provided: MCA Benin Total Quarterly Disbursement: $4,044,765				
Access to Financial Services.	$19,650,000	Expand Access to Financial Services.	$443,003	Operational self-sufficiency of participating microfinance institutions. Number of microfinance institutions supervised by the microfinance cellule. Total incremental increase in value of new credit extended and savings received by financial institutions participating in the project. Share value of all loans outstanding that have one or more installments of principal over 30 days past due. Total number of loans guaranteed by land titles per year.

ASSISTANCE PROVIDED UNDER SECTION 605—Continued

Projects	Obligated	Objectives	Cumulative disbursements	Measures
Access to Justice	$34,270,000	Improved Ability of Justice System to Enforce Contracts and Reconcile Claims.	$251,766	Number of cases processed at the arbitration center. Percentage of all cases in the ''Tribunal de Premiere Instance'' courts per year. Percentage of all cases resolved in court of appeals per year. Average distance to reach TPI. Number of enterprises registered through the registration center. Average number of days required to register an enterprise.
Access to Land	$36,020,000	Strengthen property rights and increase investment in rural and urban land.	$2,299,452	Total value of additional investments in target rural land parcels. Total value of additional investments in target urban land parcels.
Access to Markets	$169,447,000	Improve Access to Markets through Improvements to the Port of Cotonou.	$1,773,328	Total metric tons of exports and imports passing through Port of Cotonou per year.
Program Administration,* Due Diligence, Monitoring and Evaluation.	$47,911,040	.....	$4,577,954	
Pending subsequent reports**.	.....	.....	$8,126,902	
Country: Ghana Year: 2008 Quarter 1 Total Obligation: $547,009,000 Entity to which the assistance is provided: MCA Ghana Total Quarterly Disbursement: $4,100,398				
Agriculture Project	$242,352,550	Enhance Profitability of cultivation, services to agriculture and product handling in support of the expansion of commercial agriculture among groups of smallholder farms.	$2,743,432	Number of hectares irrigated. Number of days to conduct a land transaction. Number of land disputes in the pilot registration districts. Registration of land rights in the pilot registration districts. Metric tons of products passing through post-harvest treatment. Portfolio-at-risk of agriculture loan fund. Value of loans disbursed to clients from agricultural loan fund. Number of additional loans. Vehicle operating costs on minor, medium and major rehabilitated roads.
Rural Development	$101,288,000	Strengthen the rural institutions that provide services complementary to, and supportive of, agricultural and agriculture business development.	$136,369	Time/ quality per procurement. Score card of citizen satisfaction with services. Gross enrollment rates. Gender parity in school enrollment. Distance to collect water. Time to collect water. Distance to sanitation facility. Travel time to sanitation facility. Incidence of guinea worm, diarrhea or bilharzias. Average number of days lost due to guinea worm, diarrhea or bilharzias. Percentage of households, schools, and agricultural processing plants in target districts with electricity. Number of inter-bank transactions. Value of deposit accounts in rural banks.
Transportation	$141,735,500	Reduce the transportation costs affecting agriculture commerce at sub-regional levels.	$30,424	Volume capacity ratio. Vehicles per hour at peak hour. Travel time at peak hour. International roughness index. Annual average daily vehicle and passenger traffic.
Program Administration,* Due Diligence, Monitoring and Evaluation.	$61,632,950	.....	$3,257,906	

ASSISTANCE PROVIDED UNDER SECTION 605—Continued

Projects	Obligated	Objectives	Cumulative disbursements	Measures
Pending subsequent reports**.	.....	.....	$7,272,608	
Country: El Salvador Year: 2008 Quarter 1 Total Obligation: $460,939,996 Entity to which the assistance is provided: MCA El Salvador Total Quarterly Disbursement: $1,810,602				
Human Development Project.	$91,674,603	Increase human and physical capital of residents of the Northern Zone to take advantage of employment and business opportunities.	$0	Number of students enrolled in the Chalatenango Center functioning as a MEGATEC institute. Graduation rate of students enrolled in the Chalatenango Center functioning as a MEGATEC institute. Number of students enrolled in participating middle technical schools. Graduation rate of students enrolled in participating middle technical schools. Number of students enrolled in non-formal training activities. Graduation rate of students enrolled in non-formal training activities. Number of households with access to water in the Northern Zone. Number of households with access to basic sanitation in the Northern Zone. Number of households with electricity in the Northern Zone. Number of individuals that benefit annually from the strategic infrastructure projects.
Productive Development Project.	$84,196,330	Increase production and employment in the Northern Zone.	$0	Investment in productive chains by selected beneficiaries.
Connectivity Project ...	$234,963,039	Reduce travel cost and time within the Northern Zone, with the rest of the country, and within the region.	$0	Weighted average of the International Roughness Index for the rehabilitation of the Transnational Highway. Weighted average of the International Roughness Index for the rehabilitation of the network of connecting roads.
Program Administration * and Control, Monitoring and Evaluation.	$50,106,024	.....	$0.	
Pending Subsequent Report **.	.....	.....	$4,034,819	
Country: Mali Year: 2008 Quarter 1 Total Obligation $460,684,411 Entity to which the assistance is provided: MCA Mali Total Quarterly Disbursement: $1,485,669				
Bamako Sénou Airport Improvement Project.	$89,631,177	Establish an independent and secure link to the regional and global economy.	$263,697	Number of weekly flight arrivals and departures. Average time for passengers to complete departures and arrivals procedures.
Industrial Park Project	$94,563,559	Develop a platform for industrial activity to be located within the Airport domain..	$529,093	Occupancy level. Average number of days required for operator to connect to Industrial Park water and electricity services.
Alatona Irrigation Project.	$234,674,675	Increase the agricultural production and productivity in the Alatona zone of the ON..	$0	Weighted average of the International Roughness Index for the rehabilitation of the Niono-Goma Coura road. Annual average daily count of vehicles on the Niono-Goma Coura road. Total amount of land irrigated by the Project in the Alatona zone. Average water volume delivered at the farm level in the Alatona zone. Crop water requirements as a percentage share of water supply at the canal headworks in the Alatona Zone. Number of 5 and 10 hectare farm plots allocated in the Alatona zone.

ASSISTANCE PROVIDED UNDER SECTION 605—Continued

Projects	Obligated	Objectives	Cumulative disbursements	Measures
				Total market garden parcels allocated in the Alatona zone. Number of titles registered in the land registration office granted to households in the Alatona zone. Number of students enrolled in schools established by the Project. Graduation rate of students enrolled in schools established by the Project. Number of farms adopting at least one new extension technique as a percentage of all farms receiving technical assistance under the Project. Total amount of credit extended in loan portfolios by participating microfinance institutions and banks in the Alatona zone. Number of active clients of microfinance institutions and banks in the Alatona zone.
Program Administration* and Control, Monitoring and Evaluation.	$41,815,000	.....	$2,747,041	
Pending Subsequent Report **.	.....	.....	$0	
Country: Mozambique (CIF ONLY)[1] Year: 2008 Quarter1 Total Obligation: $25,346,200 Entity to which the assistance is provided: MCA Mozambique Total Quarterly Disbursement: $0				
Water and Sanitation Project.	N/A	Increase access to reliable and quality water and sanitation facilities.	N/A	Value of productive days gained due to less diarrhea, cholera and/or malaria. School attendance days gained due to less diarrhea, cholera and/or malaria. Number (Percent) of businesses with access to improved water source. Reduction in time for rural/urban households to access improved water sources. Number (Percent) or urban households with access to improved water sources. Number (Percent) of rural households with access to improved water sources. Number (Percent) of urban households with access to improved sanitation facilities.
Road Rehabilitation Project.	N/A	Increase access to productive resources and markets.	N/A	Increase in agricultural production among communities affected by road rehabilitation works. Increase in the number of new businesses within 5 km of rehabilitated roads. Reduction in vehicle operating costs as a result of rehabilitated roads. Time savings due to a reduction in time to travel a fixed length of rehabilitated road. Weighted average of the International Roughness Index for the rehabilitation roads. Average annual daily traffic volume on rehabilitated roads disaggregated by vehicle type.
Land Tenure Services Project.	N/A	Establish efficient, secure land access for households and investors.	N/A	Increase (Percent) in value of new investments on land. Number of new businesses. Reduction (Percent) in time to right to land usage. More efficient, free and secure land transfers/transactions.

ASSISTANCE PROVIDED UNDER SECTION 605—Continued

Projects	Obligated	Objectives	Cumulative disbursements	Measures
Farmer Income Support Project.	N/A	Improve coconut productivity and diversification into cash	N/A	Increase (Percentage) in parcel-holder land value. Reduction (Percent) in costs to right to land usage. Reduction (Percentage) in loss of coconut production and coconut products' sales. Increased income (Percentage) from sales from intercropping activities to small farm plot holders. Increased number (Percentage) of live coconut trees. Increased productive capacity (Percentage) of coconut trees.
Program Administration* and Control, Monitoring and Evaluation	N/A		N/A	
Pending Subsequent Report**.			N/A	
Country: Lesotho (CIF ONLY) Year: 2008 Quarter 1 Total Obligation: $15,668,416 Entity to which the assistance is provided: MCA Lesotho Total Quarterly Disbursement: $30,000				
Water Project	$4,913,000	Improve the water supply for industrial and domestic needs, and enhance rural livelihoods through improved watershed management.	N/A	Increased urban access to potable water supply. Increase in volume of water delivered after treatment at Metolong site. Decrease in percentage of urban water that is not accounted for (non-revenue losses plus physical losses). Number of people covered per year in rural areas with MCC funded rural water supply. Number of new VIP latrines provided to households.
Health Project	$4,436,000	Increase access to life-extending ART and essential health services by providing a sustainable delivery platform.	N/A	Increase in the percentage of health facilities providing full package of standard services for level of center (MoHSW 2007 standard). Increase in TB treatment success rate. Increase in the percentage of health facilities staffed with standard number and type of qualified staff (MoHSW 2007 standard). Increase in the number of patients treated in health centers in Lesotho. Increase in immunization rate (measles). Number of people receiving ARV treatment (number). Increase in annual enrollment at National Health Training College. Increase in average referred tests performed at the central laboratory per quarter during the past year. Increase in average number of blood units collected per quarter during the past year.
Private Sector Development Project.	$710,000	Stimulate investment by improving access to credit, reducing transaction costs and increasing the participation of women in the economy.	$30,000	Increase in the percentage of the adult population listed by a private credit bureau with current information on repayment history, unpaid debts or credit outstanding. Increase in the number of payments associated with salaries and pensions made through EFT per year. Land used as collateral (number of mortgage bonds registered). Land transaction costs (percent of property value).

ASSISTANCE PROVIDED UNDER SECTION 605—Continued

Projects	Obligated	Objectives	Cumulative disbursements	Measures
				Land transaction times (median number of days necessary to complete a procedure). Increase in the number of pending civil cases in the High Court. Gender equality index (percent change in index of knowledge, attitudes, and practices for supporting gender equality in economic rights).
Program Administration* and Control, Monitoring and Evaluation.	$5,609,416		N/A.	
Pending Subsequent Report **.			N/A.	
Country: Morocco (CIF ONLY) Year: 2008 Quarter 1 Total Obligation: $32,400,000 Entity to which the assistance is provided: MCA Morocco Total Quarterly Disbursement: $0				
Fruit Tree Productivity	$6,959,765	TBD	N/A	TBD
Small Scale Fisheries	$7,005,874	TBD	N/A	TBD
Artisan and Fez Medina.	$6,142,437	TBD	N/A	TBD
Financial Services	$500,000	TBD	N/A	TBD
Program Administration* and Control, Monitoring and Evaluation.	$11,271,924	TBD	N/A	TBD
Pending Subsequent Report **.	N/A	TBD	N/A	TBD

*Program administration funds are used to pay items such as salaries, rent, and the cost of office equipment.
**These amounts represent disbursements made that will be allocated to individual projects in the subsequent quarter(s) and reported as such in subsequent quarterly report(s).

619(b) Transfer or allocation of funds

U.S. Agency to which funds were transferred or allocated	Amount	Description of program or project
USAID	$24,222,500	Threshold Program.

[1] Beginning in fiscal year 2007, CIF (*i.e.*, Compact Implementation Funding) is assistance made available to a country, upon signature of a compact, under the authority of Section 609(g) of the Act. It is additional to compact program assistance provided under Section 605 of the Act upon entry into force of the compact and is included in the overall total of compact funding. As of this report, only CIF funds have been obligated for Mozambique, Lesotho and Morocco.

Dated: April 16, 2008.

Matthew McLean,

Vice President, Congressional and Public Affairs, Millennium Challenge Corporation.

[FR Doc. E8–8590 Filed 4–18–08; 8:45 am]

BILLING CODE 9210–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Federal Council on the Arts and the Humanities; Meeting of Arts and Artifacts Indemnity Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meeting.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463 as amended) notice is hereby given that a meeting of the Arts and Artifacts Indemnity Panel of the Federal Council on the Arts and the Humanities will be held at 1100 Pennsylvania Avenue, NW., Washington, DC 20506, in Room 730, from 9 a.m. to 5 p.m., on Monday, May 12, 2008.

The purpose of the meeting is to review applications for Certificates of Indemnity submitted to the Federal Council on the Arts and the Humanities for exhibitions beginning after July 1, 2008.

Because the proposed meeting will consider financial and commercial data and because it is important to keep values of objects, methods of transportation and security measures confidential, pursuant to the authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated July 19, 1993, I have determined that the meeting would fall within exemption (4) of 5 U.S.C. 552(b) and that it is essential to close the meeting to protect the free exchange of views and to avoid interference with the operations of the Committee.

It is suggested that those desiring more specific information contact Acting Advisory Committee Management Officer Heather Gottry, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, or call 202/606–8322.

Heather C. Gottry,

Acting Advisory Committee, Management Officer.

[FR Doc. E8–8603 Filed 4–18–08; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of additional meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, as amended), notice is hereby given that the following meetings of Humanities Panels will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Heather C. Gottry, Acting Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and/or privileged or confidential information of a personal nature, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* May 28, 2008.
   Time: 9 a.m. to 5 p.m.
   Room: 402.
   Program: This meeting will review applications for Digital Humanities Start Up Grants, submitted to the Office of Digital Humanities, at the October 16, 2007 deadline.
2. *Date:* May 29, 2008.
   Time: 9 a.m. to 5 p.m.
   Room: 402.
   Program: This meeting will review applications for Digital Humanities Start Up Grants, submitted to the Office of Digital Humanities, at the April 2, 2008 deadline.

Heather C. Gottry,

Acting Advisory Committee Management Officer.

[FR Doc. E8–8607 Filed 4–18–08; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; President's Committee on the Arts and the Humanities: Meeting #63

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the President's Committee on the Arts and the Humanities (PCAH) will be held on May 5, 2008, from 8:30 a.m. to 10:30 a.m. (ending time is tentative). The meeting will be held in Salon IV, The Ritz-Carlton, 6961 Avenue of the Governors, Isla Verde, Carolina, Puerto Rico 00979.

The Committee meeting will begin with welcome, introductions, and announcements. Updates and discussion on recent programs and activities will follow, including a focus on PCAH's international projects. Reports from the federal cultural agencies (the National Endowment for the Arts, National Endowment for the Humanities, and Institute of Museum and Library Services) are also slated. The meeting will include a review of PCAH ongoing programming for youth arts and humanities learning, preservation and conservation, and special events. The meeting will adjourn after discussion of other business, as necessary, and closing remarks.

The President's Committee on the Arts and the Humanities was created by Executive Order in 1982, which currently states that the ''Committee shall advise, provide recommendations to, and assist the President, the National Endowment for the Arts, the National Endowment for the Humanities, and the Institute of Museum and Library Services on matters relating to the arts and the humanities.''

Any interested persons may attend as observers, on a space available basis, but seating is limited. Therefore, for this meeting, individuals wishing to attend are advised to contact Lindsey Clark of the President's Committee staff at least seven (7) days in advance of the meeting at (202) 682–5409 or write to the Committee at 1100 Pennsylvania Avenue, NW., Suite 526, Washington, DC 20506. Further information with reference to this meeting can also be obtained from Ms. Clark.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Suite 724, Washington, DC 20506, (202) 682–5532, TDY–TDD (202) 682–5560, at least seven (7) days prior to the meeting.

Dated: April 16, 2008.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. E8–8549 Filed 4–18–08; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Education and Human Resources; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Education and Human Resources (#1119).

Date/Time: May 7, 2008; 8:30 a.m. to 5 p.m. May 8, 2008; 8:30 a.m. to 12 p.m.

Place: National Science Foundation Headquarters, Stafford Place II—Room 555, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: James Colby, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 292–5331.

If you are attending the meeting and need access to the NSF, please contact the individual listed above so your name may be added to the building access list.

Purpose of Meeting: To provide advice with respect to the Foundation's education and human resources programming.

Agenda:

Wednesday, May 7, 2008

Assistant Director's Remarks

Overview of Selected Programs that Support:

- Broadening Participation to Improve Workforce Development.
- Enriching the Education of STEM Teachers.
- Promoting Learning Through Research and Evaluation.

Review and Acceptance of Special Report from NSF's Task Force on Cyber-enabled STEM Learning.

Thursday, May 8, 2008

Overview of Selected Programs that Support:

- Furthering Public Understanding of Science and Advancing STEM Literacy.
- Review and Acceptance of Committee of Visitor Reports.
- Future Issues for Consideration.

Dated: April 15, 2008.

Susanne Bolton,

Committee Management Officer.

[FR Doc. E8–8461 Filed 4–18–08; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On March 17, 2008, the National Science Foundation published a notice in the **Federal Register** of a permit application received. A permit was issued on April 16, 2008 to: H. William Detrich, III, Permit No. 2009–001.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. E8–8524 Filed 4–18–08; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Reliability and Probabilistic Risk Assessment; Notice of Cancellation of Meeting

The ACRS Subcommittee meeting on Reliability and Probabilistic Risk Assessment scheduled for April 18, 2008 has been cancelled. This meeting was published previously in the **Federal Register** on Monday, March 24, 2008 (73 FR 15543).

For further information contact the Designated Federal Official Dr. Hossein P. Nourbakhsh, (Telephone: 301–415–5622) between 7:30 a.m. and 4:15 p.m. (ET).

Dated: April 14, 2008.

Cayetano Santos,

Branch Chief, ACRS.

[FR Doc. E8–8548 Filed 4–18–08; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33–8910; 34–57669; File No. 265–24]

Advisory Committee on Improvements to Financial Reporting.

AGENCY: Securities and Exchange Commission.

ACTION: Room Change for Meeting of SEC Advisory Committee on Improvements to Financial Reporting.

SUMMARY: The Securities and Exchange Commission Advisory Committee on Improvements to Financial Reporting is providing notice that it is changing the room location of its public meeting on Friday, May 2, 2008. The meeting will continue to be held at the Donald E. Stephens Conference Center, 5555 N. River Road, Rosemont, Illinois 60018, beginning at 8 a.m. (CDT). However, the meeting will now be located in room 40.

FOR FURTHER INFORMATION CONTACT: James L. Kroeker, Deputy Chief Accountant, or Shelly C. Luisi, Senior Associate Chief Accountant, at (202) 551–5300, Office of the Chief Accountant, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–6561.

SUPPLEMENTARY INFORMATION: In accordance with Section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 1, 10(a), James L. Kroeker, Designated Federal Officer of the Committee, has approved publication of this notice.

Dated: April 15, 2008.

Nancy M. Morris,

Committee Management Officer.

[FR Doc. E8–8516 Filed 4–18–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Wednesday, April 23, 2008 at 10 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3) (5), (7), (8), (9)(B), and (10) and 17 CFR 200.402(a)(3), (5), (7), (8), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Atkins, as duty officer, voted to consider the items listed for the Closed Meeting in closed session.

The subject matter of the Closed Meeting scheduled for April 23, 2008 will be: formal orders of investigation; institution and settlement of injunctive actions; and institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: the Office of the Secretary at (202) 551–5400.

Dated: April 16, 2008.

Nancy M. Morris,

Secretary.

[FR Doc. E8–8544 Filed 4–18–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57660; File No. SR–Amex–2007–131]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving Proposed Rule Change, as Modified by Amendment No. 1, Relating to Generic Listing Standards for Index Multiple Fund Shares and Index Inverse Fund Shares

April 14, 2008.

I. Introduction

On December 20, 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 revise Amex rules to include generic listing standards for series of Index Multiple Exchange Traded Fund Shares (''Multiple Fund Shares'') and Index Inverse Exchange Traded Fund Shares (''Inverse Fund Shares'') (collectively, the ''Fund Shares''). On February 29, 2008, Amex filed Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

March 13, 2008.[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

Amex Rules 1000A–AEMI and Rules 1001A through 1005A provide standards for listing Index Fund Shares (''IFSs'') on the Exchange. The Exchange proposes to amend the definition of ''Index Fund Share'' set forth in Amex Rule 1000A–AEMI(b)(2) to reflect that domestic equity, international or global equity, or fixed income securities indexes, or a combination thereof, may be used as the underlying performance benchmark for Fund Shares.[4]

The Exchange also proposes to revise Commentaries .02, .03 and .04 to Amex Rule 1000A–AEMI and add new Commentary .01 to Amex Rule 1002A to permit the listing and trading of Multiple Fund Shares and certain Inverse Fund Shares pursuant to the Exchange's generic listing standards for IFSs. Specifically, the investment objective associated with the Fund Shares must be expected to achieve investment results, before fees and expenses, by a specified multiple (Multiple Fund Shares) or inversely up to −200% (Inverse Fund Shares) of the underlying performance benchmark domestic equity, international or global equity and/or fixed income indexes, as applicable.

Accordingly, this proposal would enable the Exchange to list and trade Multiple Fund Shares and certain Inverse Fund Shares pursuant to Rule 19b–4(e) of the Act[5] if each of the conditions set forth in Commentaries .02, .03, .04 and .05 to Amex Rule 1000A–AEMI, as applicable, are satisfied.[6]

Limitation on Leverage

In connection with Inverse Funds that seek to provide investment results, before fees and expenses, in an amount that exceeds −200% of the underlying benchmark index, the Exchange's proposal would continue to require specific Commission approval pursuant to Section 19(b)(2) of the Act.[7] In particular, Amex Rule 1000A–AEMI(b)(2)(iii) would expressly prohibit Inverse Funds that seek to provide investment results, before fees and expenses, in an amount that exceeds −200% of the underlying benchmark index, from being approved by the Exchange for listing and trading pursuant to Rule 19b–4(e) under the Act.[8]

In connection with Multiple Fund Shares, proposed Amex Rule 1000A–AEMI(b)(2) does not provide a similar limitation on leverage. Instead, the proposal would permit the underlying registered management investment company or fund to seek to provide investment results, before fees and expenses, that correspond to any multiple, without limitation, of the percentage performance on given day of a particular domestic equity, international or global equity, or fixed income securities indexes or a combination thereof.

Availability of Information About Fund Shares and Underlying Indexes

Proposed new Commentary .01 to Amex Rule 1002A provides that the portfolio composition of a Fund will be disclosed on a public Web site. Web site disclosure of portfolio holdings that will form the basis for the calculation of the net asset value by the issuer of a series of Multiple Fund Shares or Inverse Fund Shares will be made daily and will include, as applicable, the identity and number of shares held of each specific equity security, the identity and amount held of each fixed income security, the specific types of Financial Instruments and characteristics of such instruments, cash equivalents and amount of cash held in the portfolio of a Fund. This public Web site disclosure of the portfolio composition of a Fund, that will form the basis for the calculation of the net asset value, will coincide with the disclosure of the same information to ''Authorized Participants.''[9] Investors will have access to the current portfolio composition of a Fund through the Fund's Web site and/or at the Exchange's Web site at *http://www.amex.com.*

Trading Halts

Existing trading halt requirements for IFSs will apply to Multiple Fund Shares and Inverse Fund Shares. In particular, Amex Rule 1002A(b)(ii) provides if the Intraday Indicative Value or the index value applicable to that series of IFSs is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the Intraday Indicative Value or the index value occurs. If the interruption to the dissemination of the Intraday Indicative Value or the index value persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.[10]

In addition, proposed new Commentary .01 to Amex Rule 1002A will require Amex to halt trading of subject Fund Shares if the Exchange becomes aware that the open-end investment company fails to properly disseminate the appropriate net asset value (''NAV'') to market participants at the same time and/or fails to provide daily public Web site disclosure of its portfolio holdings. Commentary .01 to Amex Rule 1002A further provides that the Exchange may resume trading in such Fund Shares only when the NAV is disseminated to all market participants at the same time or the daily public Web site disclosure of portfolio holdings occurs, as appropriate.

In addition to other factors that may be relevant, the Exchange may consider factors such as those set forth in Amex Rule 918C(b) in exercising its discretion to halt or suspend trading in Multiple and/or Inverse Fund Shares. These factors would include, but are not limited to, (1) the extent to which trading is not occurring in securities comprising an Underlying Index and/or the Financial Instruments of a Multiple or Inverse Fund, or (2) whether other

[3] *See* Securities Exchange Act Release No. 57451 (March 7, 2008), 73 FR 13591.

[4] Multiple Fund Shares seek to provide investment results, before fees and expenses, that correspond to a specified multiple of the percentage performance on a given day of a particular foreign, domestic or fixed income securities index. Inverse Fund Shares seek to provide investment results, before fees and expenses, that correspond to the inverse (opposite) of the percentage performance on a given day of a particular foreign, domestic or fixed income securities index by a specified multiple. Fund Shares differ from traditional exchange-traded fund (''ETF'') shares in that they do not merely correspond to the performance of a given securities index, but rather attempt to match a multiple or inverse of such underlying index performance.

[5] 17 CFR 240.19b–4(e).

[6] *See* Commentaries .02(a)(A) to Amex Rule 1000A–AEMI (Domestic Equity); .02(a)(B) to Amex Rule 1000A–AEMI (International Equity); .02(a)(C) to Amex Rule 1000A–AEMI (Prior Approved Indexes); .03 to Amex Rule 1000A–AEMI (Fixed Income); and .04 to Amex Rule 1000A–AEMI (Combination Indexes of Domestic Equity, International Equity and/or Fixed Income).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 240.19b–4(e).

[9] Authorized Participants are the only persons that may place orders to create and redeem Creation Units. Authorized Participants must be registered broker-dealers or other securities market participants, such as banks and other financial institutions that are exempt from registration as broker-dealers to engage in securities transactions, who are participants in DTC. The Commission notes that, although substantively identical, the format of the disclosure of portfolio holdings to Authorized Participants may differ from the format of the public Web site disclosure.

[10] If an IFS is traded on the Exchange pursuant to unlisted trading privileges, the Exchange will halt trading if the primary listing market halts trading in such IFS because the Intraday Indicative Value and/or the index value is not being disseminated. *See* Securities Exchange Act Release No. 55018 (December 28, 2006), 72 FR 1040 (January 9, 2007) (SR–Amex–2006–109).

unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In the case of the Financial Instruments held by a Multiple or Inverse Fund, the Exchange represented that a notification procedure will be implemented so that timely notice from the investment adviser of such Multiple or Inverse Fund is received by the Exchange when a particular Financial Instrument is in default or shortly to be in default. Notification from the investment adviser will be made by phone, facsimile or e-mail. The Exchange will then determine on a case-by-case basis whether a default of a particular Financial Instrument justifies a trading halt of the Multiple and/or Inverse Fund Shares. Trading in Multiple and/or Inverse Fund Shares will also be halted if the circuit breaker parameters under Amex Rule 117 have been reached.

Suitability

Prior to commencement of trading, the Exchange will issue an Information Circular to its members and member organizations providing guidance with regard to member firm compliance responsibilities (including suitability obligations) when effecting transactions in the Fund Shares and highlighting the special risks and characteristics of Multiple and Inverse Funds Shares as well as applicable Exchange rules.

This Information Circular will set forth the requirements relating to Commentary .05 to Amex Rule 411 (Duty to Know and Approve Customers). Specifically, the Information Circular will remind members of their obligations in recommending transactions in the Shares so that members have a reasonable basis to believe that (1) the recommendation is suitable for a customer given reasonable inquiry concerning the customer's investment objectives, financial situation, needs, and any other information known by such member, and (2) the customer can evaluate the special characteristics, and is able to bear the financial risks, of such investment. In connection with the suitability obligation, the Information Circular will also provide that members make reasonable efforts to obtain the following information: (1) The customer's financial status; (2) the customer's tax status; (3) the customer's investment objectives; and (4) such other information used or considered to be reasonable by such member or registered representative in making recommendations to the customer.

III. Discussion

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act [11] and the rules and regulations thereunder applicable to a national securities exchange.[12] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[13] which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Generic Listing Standards

Pursuant to Section 19(b) of the Act [14] and Rule 19b–4 thereunder,[15] the listing and trading of a new derivative securities product is a proposed rule change that must be filed with and approved by the Commission. Rule 19b–4(e) under the Act,[16] however, provides that the listing and trading of a new derivative securities product by an exchange will not be deemed a proposed rule change pursuant to Rule 19b–4(c)(1) under the Act [17] if the Commission has approved, pursuant to Section 19(b) of the Act, the self regulatory organization's trading rules, procedures, and listing standards for the product class that would include the new derivative securities product, and the exchange has a surveillance program for the product class. Thus, at present, Amex must submit for Commission approval a proposal for each new series of Fund Shares that it seeks to list and trade.

The Commission believes that the Exchange's adoption of listing and trading standards for Fund Shares that meet the requirements of Commentaries .02, .03 and .04 to Amex Rule 1000A–AEMI should fulfill the intended objective of Rule 19b–4(e) by allowing such Fund Shares to commence trading, without the need for individualized Commission approval. The Commission notes that it has previously approved the listing and trading of various Multiple Fund Shares and Inverse Fund Shares.[18] The proposed rules should reduce the time frame for bringing these securities to market, thereby reducing the burdens on issuers and other market participants and promoting competition.

Listing and Trading Rules

Taken together, the Commission finds that the Exchange's proposal contains adequate rules and procedures to govern the listing and trading of Inverse Fund Shares and Multiple Fund Shares listed pursuant to Rule 19b–4(e) on the Exchange. All Fund Shares listed under the proposed generic standards will be subject to the full panoply of Amex rules and procedures that currently govern the trading of IFSs on the Exchange. For example, where the value of the underlying index or portfolio of securities on which the series of Fund Shares is based is no longer calculated or available, the Exchange would commence delisting proceedings. Likewise, in the event that the issuer of a series of Fund Shares substitutes a new index or portfolio for the existing index or portfolio, the Exchange would commence delisting proceedings if the new index or portfolio does not meet the requirements of and listing standards set forth in Rule 1000A–AEMI.

Fund Shares listed and/or traded under the proposed ''generic'' standards would be subject to existing Amex rules that govern the continued listing and trading of IFSs. In addition, the Commission notes that proposed new Commentary .01 to Amex Rule 1002A will require that the portfolio composition of a Fund be disclosed on a public Web site.

Information Circular

The Exchange has represented that it will distribute, as appropriate, an Information Circular to its members and member organizations describing,

[11] 15 U.S.C. 78f.

[12] 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).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78s(b)(1).

[15] 17 CFR 240.19b–4.

[16] 17 CFR 240.19b–4(e).

[17] 17 CFR 240.19b–4(c)(1).

[18] *See* Securities Exchange Act Release Nos. 56713 (October 29, 2007), 72 FR 61915 (November 1, 2007) (SR–Amex–2007–74) (approving the listing and trading of Rydex Leveraged Funds, Inverse Funds and Leveraged Inverse Funds); 52553 (October 3, 2005), 70 FR 59100 (October 11, 2005) (SR–Amex–2004–62) (approving the listing and trading of the ProShares Ultra Funds and Short Funds); 54040 (June 23, 2006), 71 FR 37629 (June 30, 2006) (SR–Amex–2006–41) (approving the listing and trading of the ProShares UltraShort Funds); 55117 (January 17, 2007), 72 FR 3442 (January 25, 2007) (SR–Amex–2006–101) (approving the listing and trading of Ultra, Short and UltraShort Funds based on various indexes); 56592 (October 1, 2007), 72 FR 57364 (October 9, 2007) (SR–Amex–2007–60) (approving the listing and trading of ProShares Ultra, Short and UltraShort Funds based on various international indexes); and 56998 (December 19, 2007), 72 FR 73404 (December 27, 2007) (SR–Amex–2007–104) (approving the listing and trading of ProShares Ultra, Short and UltraShort Funds based on several fixed income indexes, among others).

among other things, their compliance responsibilities and highlighting the special risks and characteristics of Multiple Fund Shares and Inverse Fund Shares, as well as applicable Exchange rules.

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.[19]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[20] that the proposed rule change (SR–Amex–2007–131), as modified by Amendment No. 1, is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–8518 Filed 4–18–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57668; File No. SR–CBOE–2008–36]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fee Changes

April 15, 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 March 28, 2008, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the CBOE. The CBOE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the CBOE under Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Hybrid 3.0 book execution fee. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE 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

On November 1, 2007, the Exchange implemented a fee of $.18 per contract applicable to orders in Hybrid 3.0 classes resting in the electronic book that are executed.[5] The classes that trade on the Hybrid 3.0 platform are options on the S&P 100 Index (''OEX''), options on the S&P 500 Index (''SPX'') and options on the Morgan Stanley Retail Index (''MVR''). The fee does not apply to orders in SPX options resting in the SPX electronic book that are executed during opening rotation on the final settlement date of CBOE Volatility Index (''VIX'') options and futures. On February 1, 2008, the Exchange extended the fee to apply to orders in Hybrid 3.0 classes that are executed by the Hybrid Agency Liaison (''HAL'') system.[6]

The Exchange now proposes to adopt three additional exceptions to the Hybrid electronic execution fee. Specifically, the Exchange will assess $.18 per contract to all electronic executions in Hybrid 3.0 classes except: (i) Orders in SPX options in the SPX electronic book that are executed during opening rotation on the final settlement date of VIX options and futures (which orders are currently exempt from the fee); (ii) executions by market-makers against orders in the complex order auction (''COA'') and Simple Auction Liaison (''SAL'') systems[7] in their appointed classes; (iii) executions by market-makers against orders in the electronic book, HAL and the complex order book (''COB'') in their appointed classes; and (iv) orders executed by a broker. The fee will be renamed ''Hybrid 3.0 execution fee.''

In pre-Hybrid 3.0 trading, market-makers that provided liquidity by trading against orders on the Retail Automatic Execution System (''RAES'') in their appointed classes did not pay the RAES Access Fee. Likewise, the Exchange believes it is appropriate to exempt from the Hybrid 3.0 execution fee executions by market-makers against orders in COA and SAL in their appointed classes.

Market-makers in pre-Hybrid 3.0 trading did not pay an execution fee (other than standard transaction fees) to trade against orders resting in the electronic book in their appointed classes. Likewise, the Exchange believes it is appropriate to exempt from the Hybrid 3.0 execution fee executions by market-makers against orders in the electronic book, HAL and COB in their appointed classes.

In addition, the Exchange does not believe it would be appropriate to charge the fee to orders that are executed electronically by a broker since such orders are already subject to brokerage fees by a broker. A similar exemption existed for the RAES Access Fee.[8] In addition, the Exchange is deleting Section 4 of the CBOE Fees Schedule regarding the RAES access fee, and revising accompanying footnotes accordingly, because the RAES system is no longer in use.

Hybrid 3.0 execution systems benefit market participants by improving execution time, service, efficiency, and in some cases providing price improvement. The Hybrid 3.0 execution fee is designed to help the Exchange recover its costs of developing these systems and offset the cost of maintaining and enhancing these systems in the future.[9]

[19] 15 U.S.C. 78f(b)(5).

[20] 15 U.S.C. 78s(b)(2).

[21] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] *See* Securities Exchange Act Release No. 56937 (December 10, 2007), 72 FR 71465 (December 17, 2007) (SR–CBOE–2007–127).

[6] *See* Securities Exchange Act Release No. 57374 (February 22, 2008), 73 FR 10845 (February 28, 2008) (SR–CBOE–2008–13). HAL is governed by CBOE Rule 6.14.

[7] COA and SAL are governed by CBOE Rules 6.53C and 6.13A, respectively.

[8] Orders received by and executed on the RAES were assessed the RAES Access Fee that was set forth in Section 4 of the CBOE Fees Schedule, with one exception that was set forth in footnote 9 of the Fees Schedule.

[9] In pre-Hybrid 3.0 trading, orders resting in the electronic book that were executed paid an Order Book Official execution fee.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[10] in general, and furthers the objectives of Section 6(b)(4),[11] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among CBOE members and other persons using CBOE facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and Rule 19b–4(f)(2) [13] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–CBOE–2008–36 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–2008–36. 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–2008–36 and should be submitted on or before May 12, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–8519 Filed 4–18–08; 8:45 am]

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[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 19b–4(f)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57664; File No. SR–NSX–2008–09]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend NSX Rule 16.2(b) and the NSX BLADE℠ Fee and Rebate Schedule To Reflect the Availability and Pricing of the Zero Display Reserve Order Type Previously Approved by the Commission

April 15, 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 April 11, 2008, National Stock Exchange, Inc. (''NSX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by NSX. NSX filed the proposal pursuant to Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) [4] thereunder, as establishing or changing a due, fee, or other charges applicable to a member, which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NSX proposes to amend NSX Rule 16.2(b)(2) and the NSX BLADE℠ Fee and Rebate Schedule (''Fee Schedule'') in order to reflect the availability and pricing of the Zero Display Reserve Order [5] type previously approved by the Commission.[6]

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nsx.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] As specified in NSX Rule 11.11(c)(2)(A).

[6] *See* Securities Exchange Act Release No. 57311 (February 12, 2008), 73 FR 9148 (February 19, 2008) (SR–NSX–2008–03).

concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Description

With this rule change, the Exchange is proposing to amend NSX Rule 16.2(b)(2) and the NSX Fee Schedule to reflect the rollout of the Zero Display Reserve Order [7] type previously approved by the Commission.[8] Specifically, Zero Display Reserve Orders are proposed to be excluded from the liquidity provider rebate structure payable to ETP Holders [9] in the Automatic Execution mode of order interaction (''AutoEx'').[10] Accordingly, ETP Holders will receive no rebate for adding liquidity with Zero Display Reserve Orders in AutoEx. In addition, in the Order Delivery [11] mode of order interaction, Zero Display Reserve Orders are proposed under NSX Rule 16.2(b)(2) and the Fee Schedule to be ineligible for both liquidity provider rebates and market data credits. Accordingly, ETP Holders will receive no rebate for adding liquidity, and will receive no market data credits, with respect to Zero Display Reserve Orders in Order Delivery. However, like other order types, Zero Display Reserve Orders are subject to fees for taking liquidity. This proposed fee and rebate structure applies to all securities, regardless of price, which are Zero Display Reserve Orders.

The proposed fee and rebate structure with respect to the Zero Display Reserve Order type is not discriminatory in that all ETP Holders are eligible to submit both displayed orders and/or non-displayed orders (*i.e.*, Zero Display Reserve Orders) at their own discretion.

The instant filing also proposes to add the words ''fee,'' ''rebate'' and ''credit'' in several places, as applicable, in the Fee Schedule for purposes of clarification. There are no other currently proposed changes to Fee Schedule.

Rationale

The amended Fee Schedule is intended to encourage ETP Holders to display orders on NSX. Because Zero Display Reserve Orders are not displayed orders, the Exchange is proposing that orders of this type do not receive any liquidity provider rebate or market data credit.

The Exchange has determined that this change is necessary for competitive reasons. Under the proposed Fee Schedule, the fees paid by a particular ETP Holder will continue to depend on a number of variables, including the mode of order interaction (AutoEx or Order Delivery), the types of securities traded through NSX BLADE℠ (Tapes A, B or C), the average daily monthly liquidity providing volume, and the price of the securities (with a distinction for those above and below $1.00). The use of Zero Display Reserve Orders and the fees and rebates they incur and accrue constitutes an additional variable which ETP Holders may take into account in allocating order flow. NSX notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be more attractive. Accordingly, the proposed modifications attempt to keep the fees reflected in the Fee Schedule competitive with fees charged by other venues and to continue to be reasonable and equitably allocated to those ETP Holders that opt to direct orders to NSX. Based upon the information above, the Exchange believes that the proposed rule change is consistent with the protection of investors and the public interest.

Effective Date and Notice

The Exchange intends to implement the proposed Fee Schedule in accordance with the proposed rule change on April 15, 2008. Pursuant to NSX Rule 16.1(c), the Exchange will ''provide ETP Holders with notice of all relevant dues, fees, assessments and charges of the Exchange'' through the issuance of a Regulatory Circular of the changes to the Fee Schedule and will provide a copy of the rule filing on the Exchange's Web site (*http://www.nsx.com*).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,[12] in general, and with Section 6(b)(4) of the Act,[13] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. Moreover, the proposed fee and rebate structure with respect to the Zero Display Reserve Order type is not discriminatory in that all ETP Holders are eligible to submit displayed orders or utilize the new Zero Display Reserve Order type and may do so at their discretion.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective upon filing with the Commission pursuant to Section 19(b)(3)(A)(ii) of the Act [14] and Rule 19b-4(f)(2) [15] thereunder, because it establishes or changes a due, fee, or other charge applicable only to a member.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[16]

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

[7] *See supra* note 5.

[8] *See supra* note 6.

[9] An ETP Holder is a registered broker or dealer that has been issued an Equity Trading Permit (''ETP'') by the NSX. An ETP Holder will have the status of a ''member'' of the Exchange as that term is defined in Section 3 of the Act.

[10] As specified in NSX Rule 11.13(b)(1).

[11] As specified in NSX Rule 11.13(b)(2).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4).

[14] 15 U.S.C. 78s(b)(3)(A)(ii).

[15] 17 CFR 240.19b–4(f)(2).

[16] *See* 15 U.S.C. 78s(b)(3)(C).

• Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NSX–2008–09 on the subject line.

Paper Comments

• Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NSX–2008–09. 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 NSX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NSX–2008–09 and should be submitted on or before May 12, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–8584 Filed 4–18–08; 8:45 am]

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[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57670; File No. SR–NYSEArca–2008–31]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to the Listing and Trading of Shares of Twelve Actively Managed Exchange-Traded Funds of the WisdomTree Trust

April 15, 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 April 4, 2008, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange''), through its wholly owned subsidiary, NYSE Arca Equities, Inc. (''NYSE Arca Equities''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade the shares (''Shares'') of the following twelve actively managed exchange-traded funds of the WisdomTree Trust (''Trust'') pursuant to NYSE Arca Equities Rule 8.600 (Managed Fund Shares): (1) WisdomTree U.S. Current Income Fund (''Current Income Fund''); (2) WisdomTree Dreyfus Australian Dollar Fund; (3) WisdomTree Dreyfus Brazilian Real Fund; (4) WisdomTree Dreyfus British Pound Sterling Fund; (5) WisdomTree Dreyfus Canadian Dollar Fund; (6) WisdomTree Dreyfus Chinese Yuan Fund; (7) WisdomTree Dreyfus Euro Fund; (8) WisdomTree Dreyfus Indian Rupee Fund; (9) WisdomTree Dreyfus Japanese Yen Fund; (10) WisdomTree Dreyfus New Zealand Dollar Fund; (11) WisdomTree Dreyfus South African Rand Fund; and (12) WisdomTree Dreyfus South Korean Won Fund (''International Currency Income Funds,'' and together with the Current Income Fund, collectively, the ''Funds''). The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade the Shares of the Funds pursuant to NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares on the Exchange.[3] Each Fund will be an actively managed exchange-traded fund. The Shares will be offered by the Trust, which was established as a Delaware statutory trust on December 15, 2005 and is registered with the Commission as an investment company.[4]

Description of the Funds and the Shares

WisdomTree Asset Management, Inc. (''WisdomTree Asset Management'') is the investment adviser to each Fund.[5] The Exchange represents that WisdomTree Asset Management is not

[3] Managed Fund Shares are securities that: (1) *Represent* an interest in a registered investment company (''Investment Company'') organized as an open-end management investment company or similar entity, that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies; (2) are issued in a specified aggregate minimum number in return for a deposit of a specified portfolio of securities and/or a cash amount with a value equal to the next determined net asset value (''NAV''); and (3) when aggregated in the same specified minimum number, may be redeemed at a holder's request, which holder will be paid a specified portfolio of securities and/or cash with a value equal to the next determined NAV. *See* NYSE Arca Equities Rule 8.600(c)(1) (defining Managed Fund Shares). *See also* Securities Exchange Act Release No. 57619 (April 4, 2008), 73 FR 19544 (April 10, 2008) (SR–NYSEArca–2008–25) (approving, among other things, rules permitting the listing and trading of Managed Fund Shares).

[4] *See* Post-Effective Amendment No. 14 to Registration Statement on Form N–1A for the Trust (File Nos. 333–132380 and 811–21864) (''Registration Statement''). The descriptions of the Funds and the Shares contained herein are based on information in the Registration Statement.

[5] WisdomTree Investments, Inc. (''WisdomTree Investments'') is the parent company of WisdomTree Asset Management.

affiliated with any broker-dealer. Mellon Capital Management serves as the sub-adviser for the Current Income Fund. The Dreyfus Corporation serves as the subadviser to each International Currency Income Fund. The Bank of New York is the administrator, custodian, and transfer agent for each Fund. ALPS Distributors, Inc. serves as the distributor for the Funds.[6]

The Current Income Fund. The Current Income Fund seeks to earn current income while preserving capital and maintaining liquidity by investing primarily in very short term, high-quality money market securities denominated in U.S. dollars. Eligible investments include commercial paper, time deposits and certificates of deposits, asset-backed securities, government bills, government notes, corporate notes, and repurchase agreements. The Current Income Fund intends to maintain an average portfolio maturity of 90 days or less and will not purchase any money market security with a remaining maturity of more than 397 calendar days.

The International Currency Income Funds. Each of the WisdomTree Dreyfus Australian Dollar Fund, British Pound Sterling Fund, Canadian Dollar Fund, Euro Fund, and Japanese Yen Fund seeks (1) to earn current income reflective of money market rates available to foreign investors in the specified country or region, and (2) to maintain liquidity and preserve capital measured in the currency of the specified country or region. Each of these Funds intends to invest primarily in very short term, investment grade money market securities denominated in the non-U.S. currency specified in its name. Eligible investments include short-term securities issued by non-U.S. governments, agencies, or instrumentalities, bank debt obligations and time deposits, bankers' acceptances, commercial paper, short-term corporate debt obligations, mortgage-backed securities, and asset-backed securities.

Each of the WisdomTree Dreyfus Brazilian Real Fund, Chinese Yuan Fund, Indian Rupee Fund, New Zealand Dollar Fund, South African Rand Fund, and South Korean Won Fund seeks (1) to earn current income reflective of money market rates available to foreign investors in the specified country, and (2) to provide exposure to changes in the value of the designated non-U.S. currency relative to the U.S. dollar. Each of these Funds intends to achieve exposure to the non-U.S. market designated by its name using the following strategy. Each of the Funds will invest primarily in short-term U.S. money market securities. In addition, each such Fund will invest a smaller portion of its assets in forward currency contracts and swaps[7] designed to provide exposure to exchange rates and/or money market instruments available to foreign investors in the non-U.S. market designated in the Fund's name. The combination of U.S. money market securities with forward currency contracts and currency swaps is designed to create a position economically similar to a money market instrument denominated in a non-U.S. currency.[8]

Each International Currency Income Fund generally will maintain a weighted average portfolio maturity of 90 days or less and will not purchase any money market instrument with a remaining maturity of more than 397 calendar days. The Exchange represents that none of the Funds will invest in non-U.S. equity securities.

The Shares. Each Fund will issue and redeem Shares on a continuous basis at NAV[9] only in large blocks of shares, typically 50,000 shares or more (''Creation Units''), in transactions with authorized participants. Each International Currency Income Fund may issue and redeem Creation Units in exchange for a designated basket of non-U.S. currency and an amount of U.S. dollar-denominated cash, a basket of non-U.S. money market instruments and a designated amount of cash, or simply a designated amount of cash. In addition, creations and redemptions of the Current Income Fund and the WisdomTree Dreyfus Brazilian Real Fund, Chinese Yuan Fund, Indian Rupee Fund, New Zealand Dollar Fund, South African Rand Fund, and South Korean Won Fund would usually occur in exchange for a basket of U.S. money market instruments and/or a designated amount of cash. Once created, Shares of the Funds will trade on the secondary market in amounts less than a Creation Unit.

More information regarding the Shares and the Funds, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions, and taxes can be found in the Registration Statement.[10]

Availability of Information

The Funds' Web site (*http://www.wisdomtree.com*), which will be publicly available prior to the public offering of the Shares, will include a form of the Prospectus for each Fund that may be downloaded. The Web site will include additional quantitative information updated on a daily basis, including, for each Fund: (1) The prior business day's reported NAV, mid-point of the bid/ask spread at the time of calculation of such NAV (the ''Bid/Ask Price''),[11] and a calculation of the premium and discount of the Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of the Core Trading Session,[12] the Trust will disclose on its Web site the identities and quantities of the portfolio of securities and other assets (the ''Disclosed Portfolio'')[13] held

[6] The Exchange states that the Trust has received and been granted by Commission order certain exemptive relief under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (''1940 Act''). In compliance with Commentary .05 to NYSE Arca Equities Rule 8.600, which applies to Managed Fund Shares based on an international or global portfolio, the Trust's application for exemptive relief under the 1940 Act states that the Funds will comply with the federal securities laws in accepting securities for deposits and satisfying redemptions with redemption securities, including that the securities accepted for deposits and the securities used to satisfy redemption requests are sold in transactions that would be exempt from registration under the Securities Act of 1933 (15 U.S.C. 77a).

[7] A forward currency contract is an agreement to buy or sell a specific currency at a future date at a price set at the time of the contract. A currency swap is an agreement between two parties to exchange one currency for another at a future rate.

[8] The Exchange states that each of these Funds may pursue its objectives through direct investments in money market instruments issued by entities in the applicable non-U.S. country and denominated in the applicable non-U.S. currency when WisdomTree Asset Management believes it is in the best interest of the Fund to do so. The decision to secure exposure directly or indirectly will be a function of, among other things, market accessibility, credit exposure, and tax ramifications for foreign investors. If any of these Funds pursues direct investment, eligible investments will include short-term securities issued by the applicable foreign government and its agencies or instrumentalities, bank debt obligations and time deposits, bankers' acceptances, commercial paper, short-term corporate debt obligations, mortgage-backed securities, and asset-backed securities. *See supra* note 4.

[9] The NAV of each Fund's Shares generally is calculated once daily Monday through Friday as of the close of regular trading on the New York Stock Exchange LLC, generally 4 p.m. Eastern Time or ''ET.'' NAV per Share is calculated by dividing a Fund's net assets by the number of Fund Shares outstanding. The Exchange states that more information regarding the valuation of Fund investments in calculating a Fund's NAV can be found in the Registration Statement.

[10] *See supra* note 4.

[11] The Bid/Ask Price of a Fund is determined using the midpoint of the highest bid and the lowest offer on the Exchange as of the time of calculation of such Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Funds and their service providers.

[12] The Core Trading Session is 9:30 a.m. to 4 p.m. Eastern Time.

[13] *See* NYSE Arca Equities Rule 8.600(c)(2) (defining the Disclosed Portfolio for a series of

by each Fund that will form the basis for the Fund's calculation of NAV at the end of the business day.[14] The Web site information will be publicly available at no charge.

In addition, for each Fund, an estimated value, defined in Rule 8.600 as the Portfolio Indicative Value,[15] will be updated and disseminated by the Exchange at least every 15 seconds during the Core Trading Session on the Exchange through the facilities of the Consolidated Tape Association. The Exchange states that the dissemination of the Portfolio Indicative Value, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of a Fund on a daily basis and to provide a close estimate of that value throughout the trading day.

Information regarding market price and volume of the Shares is and will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. The previous day's closing price and trading volume information will be published daily in the financial section of newspapers. Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association high-speed lines.

Initial and Continued Listing

The Exchange represents that the Shares will be subject to NYSE Arca Equities Rule 8.600(d), which sets forth the initial and continued listing criteria applicable to Managed Fund Shares.[16] The Exchange further represents that, for initial and/or continued listing, the Shares must be in compliance with Rule 10A–3 under the Exchange Act,[17] as provided by NYSE Arca Equities Rule 5.3.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of a Fund. The Shares of the Funds will be halted if the ''circuit breaker'' parameters in NYSE Arca Equities Rule 7.12 are reached. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities comprising the Disclosed Portfolio and/or the financial instruments of a Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of a Fund may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. The Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. ET in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange states that it has appropriate rules to facilitate transactions in the Shares during all such trading sessions. The minimum trading increment for the Shares on the Exchange will be $0.01.

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products (which will include Managed Fund Shares) to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations. The Exchange states that it may obtain information via the Intermarket Surveillance Group (''ISG'') from other exchanges who are members or affiliate members of ISG.[18] In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders [19] in an Information Bulletin (''Bulletin'') of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a),[20] which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (4) how information regarding the Portfolio Indicative Value is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information. In addition, the Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement, discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act, and disclose that the NAV for the Shares will be calculated after 4 p.m. ET each trading day.

Managed Fund Shares as the identities and quantities of the securities and other assets held by the Investment Company that will form the basis for the Investment Company's calculation of NAV at the end of the business day).

[14] Under accounting procedures followed by the Funds, trades made on the prior business day (''T'') will be booked and reflected in the NAV on the current business day (''T+1''). Notwithstanding the foregoing, portfolio trades that are executed prior to the opening of the Exchange on any business day may be booked and reflected in the NAV on such business day. Accordingly, the Funds will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

[15] NYSE Arca Equities Rule 8.600(c)(3) (defining Portfolio Indicative Value as the estimated indicative value of a Managed Fund Share based on current information regarding the value of the securities and other assets in the Disclosed Portfolio).

[16] *See also supra* note 6 (describing the Funds' compliance with Commentary .05 to NYSE Arca Equities Rule 8.600).

[17] *See* 17 CFR 240.10A–3.

[18] For a list of the current members and affiliate members of ISG, *see http://www.isgportal.org*. The Exchange notes that not all of the components of the Disclosed Portfolio for each Fund may trade on exchanges that are members or affiliate members of ISG.

[19] ETP Holder refers to a sole proprietorship, partnership, corporation, limited liability company, or other organization in good standing that has been issued an Equity Trading Permit or ''ETP.'' An ETP Holder must be a registered broker or dealer pursuant to Section 15 of the Act. *See* NYSE Arca Equities Rule 1.1(n).

[20] NYSE Arca Equities Rule 9.2(a) provides that an ETP Holder, before recommending a transaction, must have reasonable grounds to believe that the recommendation is suitable for the customer based on any facts disclosed by the customer as to his other security holdings and as to his financial situation and needs. Further, the rule provides, with a limited exception, that prior to the execution of a transaction recommended to a non-institutional customer, the ETP Holder shall make reasonable efforts to obtain information concerning the customer's financial status, tax status, investment objectives, and any other information that the ETP Holder believes would be useful to make a recommendation.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) of the Act,[21] which states that a national securities exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change will facilitate the listing and trading of additional types of exchange-traded products that will enhance competition among market participants, to the benefit of investors and the marketplace. In addition, the listing and trading criteria set forth in NYSE Arca Equities Rule 8.600 are intended to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange states that it has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

The Exchange has requested accelerated approval of this proposed rule change prior to the 30th day after the date of publication of the notice of the filing thereof. The Commission is considering granting accelerated approval of the proposed rule change at the end of a 15-day comment period.

[21] 15 U.S.C. 78f(b)(5).

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–NYSEArca–2008–31 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2008–31. 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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2008–31 and should be submitted on or before May 6, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–8528 Filed 4–18–08; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

Revocation of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration by the Final Order of the United States District Court for the District of Massachusetts, dated February 6, 2008, the United States Small Business Administration hereby revokes the license of Axxon Capital, L.P., a Delaware Limited Partnership, to function as a small business investment company under the Small Business Investment Company License No. 01/71–0382 issued to Axxon Capital, L.P., on November 3, 2000 and said license is hereby declared null and void as of February 6, 2008.

Dated: April 1, 2008.

Harry E. Haskins,

Associate Administrator for Investment.

[FR Doc. E8–8529 Filed 4–18–08; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities; Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law (Pub. L.) 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions to OMB-approved information collections and extensions (no change) of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the Agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and how to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, e-mail or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and the SSA Reports Clearance Officer

[22] 17 CFR 200.30–3(a)(12).

to the addresses or fax numbers listed below.

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, E-mail address: *OIRA_Submission@omb.eop.gov*.

(SSA), Social Security Administration, DCBFM, Attn: Reports Clearance Officer, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–965–6400, E-mail address: *OPLM.RCO@ssa.gov.*

SSA has submitted the information collections listed below. Your comments on the information collections will be most useful if OMB and SSA receive them within 30 days from the date of this publication. You can request a copy of the information collections by e-mail, *OPLM.RCO@ssa.gov,* fax 410–965–6400, or by calling the SSA Reports Clearance Officer at 410–965–0454.

1. Social Security Number Verification Services—20 CFR 401.45—0960–0660. Under Internal Revenue Service regulations, employers are obligated to provide wage and tax data to SSA using Form W–2 or its electronic equivalent. As part of this process, the employer must furnish the employee's name and Social Security number (SSN). The employee's name and SSN must match SSA's records for the employee's earnings to be posted properly to their Earnings Record, which SSA maintains.

To assure employers provide accurate name and SSN data that match SSA's records, SSA offers several cost-free methods for employers to verify the information as follows: (1) Internet-based service, known as the Social Security Number Verification Service (SSNVS), where the employer can verify if the reported names and SSNs of their employees match SSA's records; (2) the Employee Verification Service (EVS), where, after registering (a one-time process), employers can verify, via paper and telephone if the reported name and SSN of their employees matches SSA's records; (3) through SSA's National 800 Number, using a new automated telephone employee verification service (TNEV) that allows authenticated callers, who have a pin and password for this process, to verify employee names and SSNs.

Type of Request: Revision of an OMB-approved information collection.

Verification system	Number of respondents	Frequency of response	Number of responses	Average burden per response (minutes)	Total annual burden (hours)
EVS	50,000	16	800,000	10	133,333
EVS One-Time Registration	50	1	50	2	2
SSNVS	200,000	60	12,000,000	5	1,000,000
TNEV	5,798	60	347,880	9	52,182
Totals	255,848		13,147,930		1,185,517

2. Cessation or Continuance of Disability or Blindness Determination and Transmittal—20 CFR 404.1512, 404.1588–1599, 404.1615—0960–0442. SSA uses the information collected on the SSA–833–C3/U3 to determine whether individuals receiving Title II disability benefits continue to be unable to engage in substantial gainful activity and are still eligible to receive benefits. The respondents are State Disability Determination Services employees.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 190,507.

Frequency of Response: 1.

Average Burden per Response: 30 minutes.

Estimated Annual Burden: 95,254 hours.

3. Continuing Disability Review Report—20 CFR 404.1589, 416.989—0960–0072. SSA uses the information collected on Form SSA–454–BK to determine whether an individual who receives Social Security disability benefits continues to be disabled. The SSA–454–BK updates the record of the disabled individual, providing information on recent medical treatment, vocational and educational experience, work activity, and evaluations of work potential for adults. It also collects information on the ability of Title XVI children to function without marked and severe limitations. Based on the responses provided, SSA obtains medical and other evidence to determine whether disability, as defined by the Social Security Act, continues or has ended, and, if so, when the disability ended. SSA conducts a continuing disability review (CDR) when a disabled individual's medical reexamination diary matures, or when SSA receives a report of medical improvement. The number of CDRs done each fiscal year depends on the number of maturing diaries, reports of medical improvement and SSA budget constraints. The respondents are recipients of benefits based on disability under Title II and/or Title XVI of the Social Security Act.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 398,000.

Frequency of Response: 1.

Average Burden per Response: 60 minutes.

Estimated Annual Burden: 398,000 hours.

4. Information Collections conducted by State DDSs on Behalf of SSA—20 CFR, subpart P, 404.1503a, 404.1512, 404.1513, 404.1514 404.1517, 404.1519; 20 CFR subpart Q, 404.1613, 404.1614, 404.1624; 20 CFR subpart I, 416.903a, 416.912, 416.913, 416.914, 416.917, 416.919 and 20 CFR subpart J, 416.1013, 416.1024, 416.1014—0960–0555. The State Disability Determination Services (DDSs) collect certain information to administer the Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) programs. They collect consultative examination (CE) medical evidence, CE credentials and Medical Evidence of Record (MER) from medical sources. The DDSs collect information from claimants regarding medical appointments and pain/symptoms. The respondents are medical providers, other sources of MER and disability claimants.

Type of Request: Revision of an OMB-approved information collection.

The total combined burden is 1,803,810 hours.

CE Collections

There are two collections from CE providers: (a) medical evidence about claimants, which DDSs use to make disability determinations when the claimant's own medical sources cannot or will not provide the required information; and (b) when CE providers offer proof of their credentials.

(a) Medical Evidence From CE Providers

	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
Paper Submissions	1,215,000	1	30	607,500
Electronic Records Express (ERE) Submissions	285,000	1	15	71,250
Totals	1,500,000	—	—	678,750

(b) CE Credentials

	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
Paper Submission	3,000	1	20	1,000

There are two CE claimant collections: (a) CE claimant completion of a response form in which claimants indicate if they intend to keep their CE appointment; and (b) CE claimant completion of a form indicating whether they want a copy of the CE report sent to their doctor.

(a) Claimants re Appointment Letter

	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
Paper Submission	750,000	1	5	62,500

(b) Claimants re Report to Medical Provider

	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
Paper Submission	1,500,000	1	5	125,000

MER Collections

The DDSs collect MER from the claimant's medical sources to determine a claimant's physical and/or mental status, prior to making a disability determination.

	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
Paper Submissions	2,480,800	1	15	620,200
Connect Direct (CD), (electronic transfer)	218,400	1	15	54,600
ERE	100,800	1	7	11,760
Submission	.....	.....	.....	.....
Total	2,800,000	—	—	686,560

Pain/Other Symptoms Information from Claimants

The DDSs use information about pain/symptoms to determine how pain/symptoms affect the claimant's ability to do work-related activities, prior to making a disability determination.

	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
Paper Submission	1,000,000	1	15	250,000

5. Function Report—Adult—Third Party—20 CFR 404.1512, 416.912—0960–0635. SSA needs the information collected on the SSA–3380–BK to make determinations on SSI and SSDI claims. This information is necessary for case development and adjudication, and DDS evaluators use it as an evidentiary source in the disability evaluation process. The respondents are third parties familiar with the functional limitations (or lack thereof) of claimants who apply for SSDI benefits and SSI payments.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 1,000,000.

Frequency of Response: 1.

Average Burden per Response: 60 minutes.

Estimated Annual Burden: 1,000,000 hours.

6. Function Report—Adult—20 CFR 404.1512 and 419.912—0960–0681. SSA uses Form SSA–3373 to collect information about a disability applicant's impairment-related limitations and ability to function. It documents the types of information specified in SSA regulations and provides disability interviewers with a convenient means to record information about how the claimant's condition affects his or her ability to function. This information, together with medical evidence, forms the evidentiary basis for the initial disability process. The respondents are SSDI and SSI applicants.

Type of Request: Revision to an OMB-approved information collection.

Number of Respondents: 4,005,367.

Frequency of Response: 1.

Average Burden per Response: 60 minutes.

Estimated Annual Burden: 4,005,367 hours.

Dated: April 14, 2008.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. E8–8358 Filed 4–18–08; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA 2008–0023]

Use of Master and Sub Accounts and Other Account Arrangements for the Payment of Benefits

AGENCY: Social Security Administration (SSA).

ACTION: Notice of request for comments.

SUMMARY: We are issuing this notice to obtain public input regarding an anticipated change to an Agency payment procedure that permits benefit payments to be deposited into a third-party's ''master'' account when the third party maintains separate ''sub'' accounts for individual beneficiaries. We anticipate changing our current procedure in light of concerns about how high-interest lenders are using this master/sub account procedure. We are also seeking comments on the practice that some beneficiaries follow of preauthorizing their banks to transfer their benefits to lenders immediately after the benefits are deposited into their accounts.

DATES: To be sure that your comments are considered, we must receive them by *June 20, 2008.*

ADDRESSES: You may submit comments by any one of four methods—Internet, facsimile, regular mail, or hand-delivery. Commenters should not submit the same comments multiple times or by more than one method. Regardless of which of the following methods you choose, please state that your comments refer to Docket No. SSA–2008–0023 to ensure that we can associate your comments with the correct regulation:

1. Federal eRulemaking portal at *http://www.regulations.gov.* (This is the most expedient method for submitting your comments, and we strongly urge you to use it.) In the *Comment or Submission* section of the webpage, type ''SSA–2008–0023'', select ''Go,'' and then click ''Send a Comment or Submission.'' The Federal eRulemaking portal issues you a tracking number when you submit a comment.

2. Telefax to (410) 966–2830.

3. Letter to the Commissioner of Social Security, P.O. Box 17703, Baltimore, Maryland 21235–7703.

4. Deliver your comments to the Office of Regulations, Social Security Administration, 922 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, between 8 a.m. and 4:30 p.m. on regular business days.

All comments are posted on the Federal eRulemaking portal, although they may not appear for several days after receipt of the comment. You may also inspect the comments on regular business days by making arrangements with the contact person shown in this preamble.

Caution: All comments we receive from members of the public are available for public viewing in their entirety on the Federal eRulemaking portal at *http://www.regulations.gov.* Therefore, you should be careful to include in your comments only information that you wish to make publicly available on the Internet. We strongly urge you not to include any personal information, such as your Social Security number or medical information, in your comments.

FOR FURTHER INFORMATION CONTACT: Ashley Harder, Office of the General Counsel, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 966–9483, for information about this notice. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.gpoaccess.gov/fr/index.html.*

Authorities

Section 205(i) of the Social Security Act (the Act) directs the Commissioner of Social Security to certify to the Department of Treasury, the name and address of the beneficiary or his representative payee, the amount of the benefit payments, and the time at which such payments should be made. The Department of Treasury's Financial Management Service then makes payments in accordance with our certification. Section 207 of the Act prohibits transfer or assignment of the right of any person to any future benefit payments under the Act and protects

the benefits from levy, attachment, garnishment, or other legal process.

In addition to the foregoing requirements, the Department of Treasury's regulations governing the Federal Government's use of the direct deposit system generally require that Federal benefit payments may be deposited only into accounts at a financial institution in the name of the recipient. 31 CFR 208.6, 210.5.

Background

For many years we have permitted individuals to have their benefits paid by direct deposit into a master account, under which the master account holder maintains separate sub accounts for each individual beneficiary. We began to accept master/sub account arrangements in order to make direct deposits to beneficiaries' investment accounts. We expanded this payment process to nursing homes as a convenience to their residents, and later to religious orders whose members rely upon these arrangements to honor their vows of poverty. We allowed the use of the master/sub account arrangement as long as individual sub accounts were carefully maintained, beneficiaries had complete access to the funds in their accounts, and the arrangements were freely revocable by the beneficiaries. Our intent in accepting these arrangements was to allow individuals to make choices that are appropriate and convenient for their situations.

In 1997, the Department of Treasury considered this payment process when it proposed rules to address account requirements for Federal payments made by electronic funds transfer. The proposed rules set forth a general rule requiring all Federal payments to be deposited into an account in the name of the recipient at a financial institution and proposed two exceptions for situations that involve an authorized payment agency, such as a representative payee, or an investment account established through a registered securities broker or dealer. 62 FR 48714, Sep. 16, 1997. There was some expectation that the exceptions would be revised to cover the existing master/sub accounts. However, rather than expanding the exceptions, Treasury decided that the payment-certifying agencies should address such additional situations by determining who is authorized to receive payment on behalf of a beneficiary. 63 FR 51490, 51500, Sep. 25, 1998.

The issue of master/sub accounts has recently come to our attention again in the context of ''payday lenders'' who solicit social security beneficiaries to take out high-interest loans. Based on the loan agreement between the beneficiary and the loan company, we may authorize the deposit of benefits directly into the loan company's master account. The loan company then deducts the loan principal, fees, and interest before depositing the remaining benefits into the beneficiary's sub account. We are also aware of check-cashing services that set up a master account at a financial institution, with sub accounts in beneficiaries' names. When a beneficiary wants to withdraw his benefits from the sub account, the check-cashing service prints a check payable to the beneficiary who can cash the check at the check-cashing service for an additional fee.

In addition, some beneficiaries preauthorize their banks to transfer funds from their accounts to their lender. Some lenders who utilize these arrangements attempt to exercise too much control over the beneficiaries' payments. They may require the use of specified banks and provide in the loan agreement that the beneficiary cannot discontinue this arrangement until the loan is repaid.

Request for Comments

We anticipate changing our current procedure in light of our concerns about how the high-interest lenders are using this master/sub account arrangement. We invite your comments about the current uses of master/sub accounts and the resulting effect on beneficiaries. We are also interested in hearing about beneficiaries who have been disadvantaged by authorizing the lender or bank to transfer their benefit payments to the lender as soon as benefits are deposited.

We recognize that merely eliminating our current master/sub account procedure may not solve all problems associated with payday lender activity. We are particularly concerned about high-interest payday lenders directing beneficiaries to set up accounts in their own name and authorizing the bank to transfer benefits to the loan company to pay back the loan and any associated interest and fees. Moreover, we are troubled by provisions in beneficiaries' loan agreements that are designed to prevent the beneficiaries from terminating direct deposit arrangements or pre-authorized transfers, and thus dissuade beneficiaries from taking actions that they may have the lawful right to take.

We expect that by obtaining information about these arrangements from beneficiaries, lenders, advocates, and other members of the public, we can revise our payment procedures to help beneficiaries avoid some of the unfortunate outcomes that may result when they enter into agreements with some payday lenders. We also would like to offer other payment alternatives that meet our statutory and regulatory obligations.

Please provide us with any comments and suggestions you have about these practices. The following questions raise issues that you may wish to consider. Feel free to raise other questions, thoughts, or comments.

- Have master/sub account arrangements disadvantaged any of our beneficiaries, and if so, in what way?
- To what extent will the elimination of the procedure allowing benefits to be deposited into master/sub accounts create significant costs and burdens on beneficiaries or organizations that currently utilize this account arrangement?
- Are there alternative payment procedures that we could offer to ensure that beneficiaries receive their benefits and have control over them?
- The Act allows us to select representative payees to receive benefits on behalf of beneficiaries when we determine the interest of the beneficiary will be served. Generally, a payee is appointed if we determine that the beneficiary is not able to manage or direct management of benefit payments. Would nursing homes and religious orders that handle monies for both incapable beneficiaries, who need a representative payee, and capable beneficiaries be able to receive and manage benefit payments without the use of master/sub accounts?
- Without master/sub account arrangements, would creditors instead require beneficiaries to preauthorize the transfer of their benefits to the creditor when they are deposited into the beneficiary's account?
- Do beneficiaries have sufficient control over their benefits when they have elected to automatically transfer their benefits into the accounts of creditors after the benefits are deposited into the beneficiary's own account?
- How can we address the situation where the lender will not allow the beneficiary to terminate a direct deposit arrangement or a pre-authorized transfer of benefits?

How We Will Use Your Comments

We will not respond directly to comments you send us because of this notice. After we consider your comments in response to this notice, we will decide how to proceed with an anticipated change in the procedure we use for the payment of benefits.

Dated: April 16, 2008.

Michael J. Astrue,

Commissioner of Social Security.

[FR Doc. E8–8576 Filed 4–18–08; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Delegation of Authority No. 312]

Delegation by the Secretary of State to the Assistant Secretary for European and Eurasian Affairs of Authority to Make Certain Determinations Regarding Assistance Related to the Dayton Accords

By virtue of the authority vested in me as Secretary of State, including the authority of section 1 of the State Department Basic Authorities Act of 1956, as amended (22 U.S.C. 2651(a)), I hereby delegate to the Assistant Secretary for European and Eurasian Affairs all authorities and functions vested in the Secretary of State under section 658(e) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2008 (Div. J, Pub. L. 110–161) to make determinations that international financial institution projects involving the extension of any financial or technical assistance to Serbia directly support the implementation of the Dayton Accords.

Notwithstanding this delegation of authority, the Secretary of State and Deputy Secretary of State may exercise any authority or function delegated by this delegation.

This delegation of authority shall be published in the **Federal Register**.

Dated: March 27, 2008.

Condoleezza Rice,

Secretary of State.

[FR Doc. E8–8594 Filed 4–18–08; 8:45 am]

BILLING CODE 4710–23–P

DEPARTMENT OF STATE

[Public Notice 6194]

Determination With Respect to Countries and Entities Failing To Take Measures To Apprehend and Transfer All Indicted War Criminals

Pursuant to the authority vested in me by Section 658 of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2008 (Div. J, Pub. L. 110–161), I hereby determine that Serbia has failed to take necessary and significant steps to implement its international legal obligations to apprehend and transfer to the International Criminal Tribunal for the Former Yugoslavia all persons in its territory who have been indicted by the Tribunal.

In addition, I hereby waive the application of Section 658 of the SFOAA with regard to certain U.S. bilateral assistance programs in Serbia and determine that such assistance directly supports the implementation of the Dayton Accords. I also hereby waive the application of section 658 of the SFOAA with regard to U.S. support for International Financial Institution projects in Serbia that directly support the implementation of the Dayton Accords as decided by the Assistant Secretary for European and Eurasian Affairs and in accordance with 658(c) and (d).

This Determination shall be reported to the Congress and published in the **Federal Register**.

Dated: March 27, 2008.

Condoleezza Rice,

Secretary of State.

[FR Doc. E8–8592 Filed 4–18–08; 8:45 am]

BILLING CODE 4710–23–P

DEPARTMENT OF STATE

[Public Notice 6193]

Secretary of State's Advisory Committee on Private International Law: Notice of Study Group Meeting

The Secretary of State's Advisory Committee on Private International Law's (ACPIL) Study Group on The 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children (''the Protection of Children's Convention'' or ''the 1996 Convention'') will be holding a public meeting on Monday, April 28, 2008.

This meeting is a follow up to a December 7, 2007 ACPIL Study Group meeting on the same Convention. Whereas the December meeting focused on Chapters I–IV of the Convention (Jurisdiction, Applicable Law, and Recognition and Enforcement), this meeting will focus on Chapters I and V of the Convention (Cooperation). The purpose of the meeting is to explain what the Convention, and in particular Chapters I and V, are intended to accomplish, what obligations they would impose on the United States if ratified, how they would benefit U.S. families, what specific children's issues they addresses, how they could be implemented in the United States, which state and/or federal laws would be affected, and which state and/or federal authorities could provide assistance in cooperating with particular requests under Chapters I and V.

Useful documents to read prior to the meeting include: (1) The text of the Convention and its Explanatory Report, available at *http://hcch.e-vision.nl/upload/expl34.pdf*; and (2) the analysis of the Convention contained in the Autumn 2005 issue of the Hague Conference's Judges Newsletter, available at *http://hcch.e-vision.nl/upload/autumn2005.pdf.*

Time: The public meeting will take place at the Department of State, Bureau of Consular Affairs/Office of Overseas Citizens Services offices, located at 2100 Pennsylvania Avenue, NW., (4th floor), Washington, DC 20520. The meeting will be held on Monday, April 28, 2008, from 9:30 a.m.–4 p.m. If you are unable to attend the public meeting and you would like to participate by teleconferencing, please contact Corrin Ferber at *Ferbercm@state.gov* or 202–736–9172 no later than Monday, April 21, 2008 to receive the conference call in number.

Public Participation: Advisory Committee Study Group meetings are open to the public up to the capacity of the room. Advance registration is requested. Persons wishing to attend should contact Corrin Ferber at *Ferbercm@state.gov* or 202–736–9172 no later than Monday, April 21, 2008 and provide her with your full name, affiliation and e-mail address. You may be asked to present a government-issued identity card (e.g., driver's license) to gain admission.

If there are individuals or entities that you believe the Department would be interested in hearing from concerning this Convention, please send their contact information to Corrin Ferber.

Dated: April 11, 2008.

Mary Helen Carlson,

Attorney-Adviser, Office of the Legal Adviser, Office of Private International Law, Department of State.

[FR Doc. E8–8593 Filed 4–18–08; 8:45 am]

BILLING CODE 4710–08–P

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1995, as Amended by Public Law 104–13; Submission for OMB Review; Comment Request

AGENCY: Tennessee Valley Authority.

ACTION: Proposed Collection; comment request.

SUMMARY: The proposed information collection described below will be submitted to the Office of Management

and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C Chapter 35, as amended). The Tennessee Valley Authority is soliciting public comments on this proposed collection as provided by 5 CFR Section 1320.8(d)(1). Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer: Mark R. Winter, Tennessee Valley Authority, 1101 Market Street (MP 3C), Chattanooga, Tennessee 37402–2801; (423) 751–6004.

Comments should be sent to the Agency Clearance Officer no later than June 20, 2008.

SUPPLEMENTARY INFORMATION:

Type of Request: Regular Submission; proposal for new data collection.

Title of Information Collection: Customer Satisfaction Survey of Recreation Users and Section 26a and Land Use Applicants.

Frequency of Use: On occasion.

Type of Affected Public: Individuals or households, business or other for-profit, non-profit institutions, farms, Federal Government, and State or local governments.

Small Business or Organizations Affected: Yes.

Estimated Number of Annual Responses: 5000.

Estimated Total Annual Burden Hours: 1000.

Estimated Average Burden Hours per Response: .2 hour.

Need for and Use of Information: TVA will conduct annual surveys to measure external customer satisfaction with TVA in a variety of areas including adequacy of recreation facilities on TVA land, performance of local TVA staff, and timeliness and quality of permitting services. Information gathered will be used to improve service delivery and relationships with customers and the public.

Steven A. Anderson,

Senior Manager, IT Planning & Governance, Information Services.

[FR Doc. E8–8555 Filed 4–18–08; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Commercial Space Transportation Advisory Committee—Closed Session

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Commercial Space Transportation Advisory Committee Special Closed Session.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. app. 2), and 5 U.S.C. 552b(c), notice is hereby given of a special closed session of the Commercial Space Transportation Advisory Committee (COMSTAC). The special closed session will be an administrative session for the Committee members to review the provisions of the COMSTAC Charter; the Federal Advisory Committee Act (FACA); 41 CFR parts 101–6 and 102–3; and the Department of Transportation and FAA Orders concerning advisory committee management. The meeting will take place on Thursday, May 15, 2008, at FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC, in the Bessie Coleman Conference Center, from 4 p.m. until 5 p.m.

FOR FURTHER INFORMATION CONTACT: Brenda Parker (AST–100), Office of Commercial Space Transportation (AST), 800 Independence Avenue, SW., Room 331, Washington, DC 20591, telephone (202) 267–3674, e-mail *brenda.parker@faa.dot.gov.*

Issued in Washington, DC, April 1, 2008.

George C. Nield,

Acting Associate Administrator for Commercial Space Transportation.

[FR Doc. E8–8587 Filed 4–18–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–1017X, STB Docket No. AB–1018X]

West Shore Railroad Corporation—Abandonment Exemption—in Union and Northumberland Counties, PA; Union County Industrial Railroad Company—Discontinuance of Service Exemption—in Union County, PA

West Shore Railroad Corporation (West Shore) and Union County Industrial Railroad Company (UCIR) (collectively, applicants) have jointly filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances of Service:* (1) for West Shore to abandon a line of railroad known as the Mifflinburg Branch, extending from milepost 0.0 at Montandon, in Northumberland County, PA, and extending in a generally westerly direction, crossing the West Branch of the Susquehanna River through Lewisburg to the Borough of Mifflinburg, ending at milepost 11.8 in Union County, PA, and (2) for UCIR to discontinue service in Union County between Lewisburg and Mifflinburg. The line traverses United States Postal Service Zip Codes 17844, 17837, and 17847.

West Shore and UCIR have certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements of 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to these exemptions, any employee adversely affected by the abandonment or discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, these exemptions will be effective on May 21, 2008, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by May 1, 2008.[3] Petitions to reopen or requests

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemptions' effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemptions' effective date.

[2] Each OFA must be accompanied by the filing fee, which currently is set at $1,300. *See* 49 CFR 1002.2(f)(25).

[3] West Shore states that it has entered into a conditional sale agreement with Lewisburg Area Recreation Authority (LARA) and asks the Board to issue a notice of interim trail use (NITU) now so that the line can be conveyed to LARA pursuant to the NITU. Because LARA has not satisfied the requirements for a NITU set forth at 49 CFR 1152.29 for prospective trail users, the request must be denied. Moreover, even had LARA already met

for public use conditions under 49 CFR 1152.28 must be filed by May 12, 2008, with: Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to applicants' representative: Richard R. Wilson, 127 Lexington Ave., Suite 100, Altoona, PA 16601.

If the verified notice contains false or misleading information, the exemptions are void *ab initio.*

West Shore and UCIR have filed an environmental and historic report which addresses the effects, if any, of the abandonment and discontinuance on the environment and historic resources. SEA will issue an environmental assessment (EA) by April 25, 2008. Interested persons may obtain a copy of the EA by writing to SEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 245–0305. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), West Shore shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by West Shore's filing of a notice of consummation by April 21, 2009, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: April 15, 2008.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Anne K. Quinlan,

Acting Secretary.

[FR Doc. E8–8586 Filed 4–18–08; 8:45 am]

BILLING CODE 4915–01–P

those requirements, any NITU the Board would issue could not take effect until after the offer of financial assistance (OFA) process was allowed to proceed and no OFA purchase or subsidy took place. It is well established that OFAs to acquire rail lines for continued rail service or to subsidize rail operations take priority over interim trail use/rail banking. See, *e.g., Mid-Michigan Railroad, Inc.—Abandonment Exemption—In Kent, Ionia, and Moncalm Counties, MI*, STB Docket No. AB–364 (Sub-No. 12X) (STB served Apr. 4, 2008). Accordingly, West Shore's suggestion that its trail use proposal here is the type of ''valid public purpose'' that would effectively ''exempt'' this proceeding from the OFA procedures at 49 U.S.C. 10904 must be rejected.

DEPARTMENT OF THE TREASURY

Open Meeting of the President's Advisory Council on Financial Literacy

AGENCY: Office of Financial Education, Treasury.

ACTION: Notice of meeting.

SUMMARY: The President's Advisory Council on Financial Literacy will convene its second meeting on Monday, May 5, 2008, via teleconference beginning at 1 p.m. Eastern Time. The telephone meeting will be open to the public. Members of the public interested in listening to the meeting should call 202–622–5770 or e-mail *FinancialLiteracyCouncil@do.treas.gov* to obtain the conference call number. Individuals needing special accommodations to take part because of a disability should notify the contact person listed below.

DATES: The telephone meeting will be held on Monday, May 5, 2008, at 1 p.m. Eastern Time.

ADDRESSES: The public is invited to submit written statements with the President's Advisory Council on Financial Literacy by any one of the following methods:

Electronic Statements

E-mail *FinancialLiteracyCouncil@do.treas.gov*; or

Paper Statements

Send paper statements in triplicate to President's Advisory Council on Financial Literacy, Office of Financial Education, Room 1332, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

In general, the Department will post all statements on its Web site (*http://www.treasury.gov/offices/domestic-finance/financial-institution/fin-education/council/index.shtml*) without change, including any business or personal information provided such as names, addresses, e-mail addresses, or telephone numbers. The Department will make such statements available for public inspection and copying in the Department's library, Room 1428, Main Department Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, on official business days between the hours of 10 a.m. and 5 p.m. You can make an appointment to inspect statements by telephoning (202) 622–0990. All statements, including attachments and other supporting materials, received are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Tom Kurek, Program Coordinator, Office of Financial Education, Department of the Treasury, Main Department Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, at (202) 622–5770 or *thomas.kurek@do.treas.gov.*

SUPPLEMENTARY INFORMATION: In accordance with section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 2 and the regulations thereunder, Dubis Correal, Designated Federal Officer of the Advisory Council, has ordered publication of this notice that the President's Advisory Council on Financial Literacy will convene its second meeting on Monday, May 5, 2008, via teleconference beginning at 1 p.m. Eastern Time. The meeting will be open to the public. Members of the public who wish to participate should contact the Office of Financial Education at 202–622–5770 or *FinancialLiteracyCouncil@do.treas.gov* by 5 p.m. Eastern Time on Friday, May 2, 2008 to obtain the conference call number. The purpose of this telephone meeting is for the President's Advisory Council on Financial Literacy to obtain an update on the work of the subgroups and to follow-up on issues from the first meeting.

The Federal Advisory Committee Act (5 U.S.C. App. 2), and implementing regulations, requires notice in the **Federal Register** 15 days in advance of a committee meeting. An agency may give less than 15 days notice in exceptional circumstances. Due to logistical circumstances and to report on the progress of the Council's subgroups on the important issues surrounding financial education, this notice period is being shortened by one day.

Dated: April 16, 2008.

Taiya Smith,

Executive Secretary, Treasury Department.

[FR Doc. E8–8585 Filed 4–18–08; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Change—The Guarantee Company of North America USA

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 9 to the Treasury Department Circular 570, 2007 Revision, published July 2, 2007, at 72 FR 36192.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6850.

SUPPLEMENTARY INFORMATION: The underwriting limitation for The Guarantee Company of North America USA (NAIC # 36650), which was listed in the Treasury Department Circular 570, July 2, 2007 is hereby amended to read $10,976,000. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570 (''Circular''), 2007 Revision, to reflect this addition.

Certificates of Authority expire on June 30th each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (see 31 CFR part 223). A list of qualified companies is published annually as of July 1 in the Circular, which outlines details as to underwriting limitations, areas in which companies are licensed to transact surety business, and other information.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c57O.*

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F01, Hyattsville, MD 20782.

Dated: April 7, 2008.

Vivian L. Cooper,

Director, Financial Accounting and Services Division.

[FR Doc. E8–8448 Filed 4–18–08; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: ProCentury Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 12 to the Treasury Department Circular 570, 2007 Revision, published July 2, 2007, at 72 FR 36192.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6850.

SUPPLEMENTARY INFORMATION: A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued under 31 U.S.C. 9305 to the following company:

ProCentury Insurance Company (NAIC # 21903). *Business Address:* P.O. Box 163340, Columbus, OH 43216–3340. PHONE: (614) 895–2000. *Underwriting Limitation b/:* $1,561,000. *Surety Licenses c/:* AK, AZ, AR, CA, DC, GA, IN, KS, LA, MA, MI, MN, MO, MT, NE, NV, NJ, NM, NY, ND, OK, PA, SC, TX, UT, WV, WI. *Incorporated in:* Texas.

Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570 (''Circular''), 2007 Revision, to reflect this addition.

Certificates of Authority expire on June 30th each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (see 31 CFR part 223). A list of qualified companies is published annually as of July 1st in the Circular, which outlines details as to the underwriting limitations, areas in which companies are licensed to transact surety business, and other information.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570.*

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F01, Hyattsville, MD 20782.

Dated: April 10, 2008.

Vivian L. Cooper,

Director, Financial Accounting and Services Division.

[FR Doc. E8–8446 Filed 4–18–08; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Application Filing Requirements

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 May 21, 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 - 7th 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: Application Filing Requirements.

OMB Number: 1550–0056.

Form Number: N/A.

Description: OTS regulations require that applications, notices, or other filings must be submitted to the appropriate Regional Office of OTS, unless specifically noted otherwise in the procedures for a particular filing. *See* 12 CFR 516.1(c). Section 516.1(c) requires applicants to file three appropriately marked copies of an application with the appropriate Regional Office. The applications are to clearly state the type of filing and contain all exhibits and other pertinent documents. Applications, notices, or other filings that raise an issue of policy or law require that two additional copies be submitted to the Applications Filing Room at OTS in Washington, DC.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1,609.

Estimated Number of Responses: 1,609.

Estimated Burden Hours per Response: 10 minutes.

Estimated Frequency of Response: Other; as required.

Estimated Total Burden: 274 hours.

Clearance Officer: Ira L. Mills, (202) 906–6531, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Dated: April 14, 2008.

Deborah Dakin,

Senior Deputy Chief Counsel, Regulations and Legislation Division.

[FR Doc. E8–8506 Filed 4–18–08; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Mutual Holding Company

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 May 21, 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: Mutual Holding Company.

OMB Numbers: 1550–0072.

Form Number: MHC–1 (OTS Form 1522) and MHC–2 (OTS Form 1523).

Description: The OTS analyzes the submitted information to determine whether the applicant meets the statutory and regulatory criteria to form a mutual holding company and/or perform minority stock issuances. Information provided in the notice or application is essential if the OTS is to fulfill its mandate to prevent insider abuse and unsafe and unsound practices by mutual holding companies and their subsidiaries. Minority issuances are not feasible without an application process that includes the review of such information.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 74.

Estimated Number of Responses: 74 .

Estimated Burden Hours per Response: It will take 400 hours for the MHC–1, 350 hours for the MHC–2, 2 hours for the MHC Dividend Waiver, and 1 hour for the Third Party Notice.

Estimated Frequency of Response: On occasion.

Estimated Total Burden: 8,275 hours.

Clearance Officer: Ira L. Mills, (202) 906–6531, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Dated: April 14, 2008.

Deborah Dakin,

Senior Deputy Chief Counsel, Regulations and Legislation Division.

[FR Doc. E8–8507 Filed 4–18–08; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0024]

Proposed Information Collection (Insurance Deduction Authorization (for Deduction From Benefit Payments)); Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to this notice. This notice solicits comments for information needed to authorize deduction from a beneficiary's compensation check.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 20, 2008.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov;* or to Nancy

J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *nancy.kessinger@va.gov.* Please refer to OMB Control No. 2900–0024 in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Insurance Deduction Authorization (For Deduction from Benefit Payments), VA Form 29–888.

OMB Control Number: 2900–0024.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 29–888 is completed by the insured or their representative to authorize deduction from their compensation check to pay premiums, loans and/or liens on his or her insurance contract.

Affected Public: Individuals or households.

Estimated Annual Burden: 622 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 3,732.

Dated: April 11, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E8–8536 Filed 4–18–08; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0068]

Proposed Information Collection (Application for Service-Disabled Veterans Insurance); Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to this notice. This notice solicits comments for information needed to determine a claimant's eligibility for service disabled insurance.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 20, 2008.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov;* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *nancy.kessinger@va.gov.* Please refer to OMB Control No. 2900–0068 in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Service-Disabled Veterans Insurance, VA Form 29–4364 and VA Form 29–0151.

OMB Control Number: 2900–0068.

Type of Review: Extension of a currently approved collection.

Abstract: Claimants complete VA Forms 29–4364 and 29–0151 to apply for service-disabled veterans insurance, designate a beneficiary and to select an optional settlement. VA uses the data collected to determine the claimant's eligibility for insurance.

Affected Public: Individuals or households.

Estimated Annual Burden: 2,833 hours.

Estimated Average Burden per Respondent: 40 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 4,250.

Dated: April 11, 2008.

By direction of the Secretary:

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E8–8537 Filed 4–18–08; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0501]

Proposed Information Collection (Veterans Mortgage Life Insurance Inquiry); Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved

collection, and allow 60 days for public comment in response to this notice. This notice solicits comments for information needed to maintain Veterans Mortgage Life Insurance accounts.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 20, 2008.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov;* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *nancy.kessinger@va.gov.* Please refer to OMB Control No. 2900–0501 in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Veterans Mortgage Life Insurance Inquiry, VA Form 29–0543.

OMB Control Number: 2900–0501.

Type of Review: Extension of a currently approved collection.

Abstract: Veterans whose mortgage is insured under Veterans Mortgage Life Insurance (VMLI) complete VA Form 29–0543 to report any recent changes in the status of their mortgage. VMLI coverage is automatically terminated when the mortgage is paid in full or when the title to the property secured by the mortgage is no longer in the veteran's name.

Affected Public: Individuals or households.

Estimated Annual Burden: 45 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 540.

Dated: April 11, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E8–8538 Filed 4–18–08; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0503]

Proposed Information Collection (Veterans Mortgage Life Insurance—Change of Address Statement); Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to this notice. This notice solicits comments for information needed to determine a veteran's continued entitlement to Veterans Mortgage Life Insurance.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 20, 2008.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov;* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *nancy.kessinger@va.gov.* Please refer to OMB Control No. 2900–0503 in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Veterans Mortgage Life Insurance—Change of Address Statement, VA Form 29–0563.

OMB Control Number: 2900–0503.

Type of Review: Extension of a currently approved collection.

Abstract: VA uses VA Form 29–0563 to inquire about a veteran's continued ownership of property issued under Veterans Mortgage Life Insurance when an address change for the veteran is received. VA uses the data collected to determine whether continued Veterans Mortgage Life Insurance coverage is applicable since the law granting this insurance provides that coverage terminates if the veteran no longer owns the property.

Affected Public: Individuals or households.

Estimated Annual Burden: 20 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 240.

Dated: April 11, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E8–8542 Filed 4–18–08; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0665]

Proposed Information Collection (Direct Deposit Enrollment/Change); Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to this notice. This notice solicits comments for information needed to start or change direct deposit of Government Life Insurance payments.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 20, 2008.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov;* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0665 in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Direct Deposit Enrollment/Change, VA Form 29–0309.

OMB Control Number: 2900–0665.

Type of Review: Extension of a currently approved collection.

Abstract: Claimants complete VA Form 29–0309 authorizing VA to initiate or change direct deposit of insurance benefit at their financial institution.

Affected Public: Individuals or households.

Estimated Annual Burden: 10,000 hours.

Estimated Average Burden per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 30,000.

Dated: April 11, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E8–8543 Filed 4–18–08; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0492]

Proposed Information Collection (VA MATIC Authorization); Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to this notice. This notice solicits comments for information needed to deduct insurance premiums from policyholder's bank account.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 20, 2008.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov;* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *nancy.kessinger@va.gov.* Please refer to OMB Control No. 2900–0492 in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: VA MATIC Authorization, VA Form 29–0532–1.

OMB Control Number: 2900–0492.

Type of Review: Extension of a currently approved collection.

Abstract: Veteran policyholders complete VA Form 29–0532–1 to authorize deduction of Government Life Insurance premiums from their bank account.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,500 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 3,000.

Dated: April 11, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E8–8545 Filed 4–18–08; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0324]

Proposed Information Collection (Supplemental Physical Examination Report); Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to this notice. This notice solicits comments on information needed to determine a veteran's eligibility or reinstatement for Government Life insurance.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 20, 2008.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov;* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *nancy.kessinger@va.gov.* Please refer to OMB Control No. 2900–0324 in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles:

a. Supplemental Physical Examination Report, VA Form 29–8146.

b. Attending Physician's Statement, VA Form 29–8158.

c. Supplemental Physical Examination Report (Diabetes—Physician's Report), VA Form 29–8160.

OMB Control Number: 2900–0324.

Type of Review: Extension of a currently approved collection.

Abstract: The forms are used to obtain information regarding the physical and/or mental condition of a veteran who has submitted an application for Government Life Insurance or reinstatement of eligibility for such insurance.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,080 hours.

a. VA Form 29–8146—750 hours.

b. VA Form 29–8158—165 hours.

c. VA Form 29–8160—165 hours.

Estimated Average Burden per Respondent:

a. VA Form 29–8146—45 minutes.

b. VA Form 29–8158—45 minutes.

c. VA Form 29–8160—45 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,440.

a. VA Form 29–8146—220.

b. VA Form 29–8158—1,000.

c. VA Form 29–8160—220.

Dated: April 11, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E8–8546 Filed 4–18–08; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0131]

Proposed Information Collection (Request for Supplemental Information on Medical and Nonmedical Applications); Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to this notice. This notice solicits comments on information needed to determine the insured's eligibility to reinstate or change government life insurance.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 20, 2008.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov;* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0131 in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the

information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Request for Supplemental Information on Medical and Nonmedical Applications, VA Form Letter 29–615.

OMB Control Number: 2900–0131.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 29–615 used by the insured to apply for new issue, reinstatement or change of plan on Government Life Insurance policies.

Affected Public: Individuals or households.

Estimated Annual Burden: 3,000 hours.

Estimated Average Burden per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 9,000.

Dated: April 11, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E8–8547 Filed 4–18–08; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register

Vol. 73, No. 77

Monday, April 21, 2008

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Food Nutrition Service

Child Nutrition Programs–Income Eligibility Guidelines

Correction

In notice document E8–7475 beginning on page 19186 in the issue of Wednesday, April 9, 2008, make the following correction:

On page 19187, in the table, in the ninth column titled ''Monthly'' under the heading ''**Hawaii**'', in the sixth row ''3,359'' should read as ''3,539''.

[FR Doc. Z8–7475 Filed 4–18–08; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF DEFENSE

Department of the Navy

[USN–2008–0016]

Privacy Act of 1974; System of Records

Correction

In notice document E8–6633 beginning on page 17331 in the issue of Tuesday, April 1, 2008, make the following correction:

On page 17332. in the first column, the system title ''**N0586–1**'' should read ''**N05861–1**''.

[FR Doc. Z8–6633 Filed 4–18–08; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree

Correction

In notice document E8–7270 beginning on page 19249 in the issue of Wednesday, April 9, 2008, make the following correction:

On page 19250, in the first column, in the third pargraph, in the eighth line, ''*http://www.usdoi.gov/enrd/Consent__Decrees.html*'' should read ''*http://www.usdoj.gov/enrd/Consent__Decrees.html*''.

[FR Doc. Z8–7270 Filed 4–18–08; 8:45 am]

BILLING CODE 1505–01–D

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1201

Streamlining Regulations

Correction

In rule document E8–6934 beginning on page 18149 in the issue of Thursday, April 3, 2008, make the following correction:

§1201.72 [Corrected]

On page 18150, in the second column, in § 1201.72*(d)*(3), in the third line, ''b'' should read ''benefit.''

[FR Doc. Z8–6934 Filed 4–18–08; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9388]

RIN 1545-BH24

Classification of Certain Foreign

Correction

In rule document E8–5686 beginning on page 15064 in the issue of Friday, March 21, 2008, make the following correction:

§301.7701–2 [Corrected]

On page 15065, in the second column, in §301.7701–2 , paragraph ''(e) Effective/applicability date.* * *'' should read ''*(e) Effective/applicability date. * * **''

[FR Doc. Z8–5686 Filed 4–18–08; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Monday,
April 21, 2008

Part II

Environmental Protection Agency

40 CFR Part 52

Federal Implementation Plan for the Billings/Laurel, Montana, Sulfur Dioxide Area; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2006–0098; FRL–8551–2]

RIN 2008–AA01

Federal Implementation Plan for the Billings/Laurel, MT, Sulfur Dioxide Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is promulgating a Federal Implementation Plan (FIP) containing emission limits and compliance determining methods for several sources located in Billings and Laurel, Montana. EPA is promulgating a FIP because of our previous partial and limited disapprovals of the Billings/Laurel Sulfur Dioxide (SO_2) State Implementation Plan (SIP). The intended effect of this action is to assure attainment of the SO_2 National Ambient Air Quality Standards (NAAQS) in the Billings/Laurel, Montana area. EPA is taking this action under sections 110, 301, and 307 of the Clean Air Act (Act).

DATES: *Effective Date:* This final rule is effective May 21, 2008. The incorporation by reference of certain publications listed in this regulation is approved by the Director of the Federal Register as of May 21, 2008.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2006–0098. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., 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 *http://www.regulations.gov* or in hard copy at the Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

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Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The initials *API* mean or refer to the American Petroleum Institute.

(iii) The initials *BAAQMD* mean or refer to the Bay Area Air Quality Management District.

(iv) The initials *CEMS* mean or refer to continuous emission monitoring system.

(v) The initials *CO* mean or refer to carbon monoxide.

(vi) The initials *COPC* mean or refer to ConocoPhillips.

(vii) The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

(viii) The initials *FIP* mean or refer to Federal Implementation Plan.

(ix) The initials H_2S mean or refer to hydrogen sulfide.

(x) The initials *MBER* mean or refer to the Montana Board of Environmental Review.

(xi) The initials *MDEQ* mean or refer to the Montana Department of Environmental Quality.

(xii) The initials *MPA* mean or refer to the Montana Petroleum Association.

(xiii) The initials *MSCC* mean or refer to the Montana Sulphur & Chemical Company.

(xiv) The initials *NAAQS* mean or refer to National Ambient Air Quality Standards

(xv) The initials *NEDA/CAP* mean or refer to the National Environmental Development Association's Clean Air Project.

(xvi) The initials *NPRA* mean or refer to the National Petrochemical & Refiners Association.

(xvii) The initials *SCAQMD* mean or refer to the South Coast Air Quality Management District.

(xviii) The initials *SIP* mean or refer to State Implementation Plan.

(xix) The initials SO_2 mean or refer to sulfur dioxide.

(xx) The words *State* or *Montana* mean the State of Montana, unless the context indicates otherwise.

(xxi) The initials *SRU* mean or refer to sulfur recovery unit.

(xxii) The initials *SWS* mean or refer to sour water stripper.

(xxiii) The initials *WETA* mean or refer to the Western Environmental Trade Association.

(xxiv) The initials *WSPA* mean or refer to the Western States Petroleum Association.

(xxv) The initials *YCC* mean or refer to the Yellowstone County Commissioners.

(xxvi) The initials *YVAS* mean or refer to the Yellowstone Valley Audubon Society.

I. Background of the Final Rules

The Clean Air Act (Act) requires EPA to establish national ambient air quality standards (NAAQS) that protect public health and welfare. NAAQS have been established for SO_2 as follows: 0.030 parts per million (ppm) annual standard, not to be exceeded in a calendar year; 0.14 ppm 24-hour standard, not to be exceeded more than once per calendar year; and 0.5 ppm 3-hour standard, not to be exceeded more

than once per calendar year. See 40 CFR 50.4 and 50.5. The Act also requires states to prepare and gain EPA approval of a plan, termed a State Implementation Plan (SIP), to assure that the NAAQS are attained and maintained.

Dispersion modeling completed in 1991 and 1993 for the Billings/Laurel area of Montana predicted that the SO_2 NAAQS were not being attained. As a result, in March 1993 EPA (pursuant to sections 110(a)(2)(H) and 110(k)(5) of the Act, 42 U.S.C. 7410(a)(2)(H) and 7410(k)(5)) requested the State of Montana to revise its previously approved SO_2 SIP for the Billings/Laurel area. See 58 FR 41450, August 4, 1993. In response, the State submitted revisions to the SO_2 SIP on September 6, 1995, August 27, 1996, April 2, 1997, July 29, 1998, and May 4, 2000.

On May 2, 2002 (67 FR 22168) and May 22, 2003 (68 FR 27908), we partially approved, partially disapproved, limitedly approved, and limitedly disapproved the Billings/Laurel SO_2 SIP. In those actions we disapproved the following:

- The attainment demonstration due to issues with various emission limits, inappropriate stack height credit, and lack of emission limits on flares.
- The emission limits for Montana Sulphur & Chemical Company's (MSCC's) sulfur recovery unit (SRU) 100-meter stack and the stack height credit on which those limits were based.
- The emission limits for MSCC's auxiliary vent stacks due to lack of an adequate limit on fuel burned in the associated heaters and boilers and lack of a reliable compliance determining method.
- The emission limits for MSCC's 30-meter stack due to lack of an adequate limit on fuel burned in the associated heaters and boilers, and lack of a reliable compliance determining method.
- Provisions that allowed sour water stripper overheads to be burned in the flares at CHS Inc. and ExxonMobil.
- ExxonMobil's refinery fuel gas combustion device emission limits and associated compliance determining methods.
- ExxonMobil's Coker CO Boiler stack emission limits and associated compliance determining methods.
- CHS Inc.'s combustion source emission limits and certain associated compliance determining methods.

On June 10, 2002, MSCC petitioned the United States Court of Appeals for the Ninth Circuit for review of EPA's May 2, 2002, final SIP action. Subsequently, MSCC and EPA agreed to a stay of the litigation pending EPA's final action on this FIP. The case is captioned *Montana Sulphur & Chemical Company* v. *United States Environmental Protection Agency,* No. 02–71657. No petitions for judicial review were filed regarding EPA's May 22, 2003, SIP action.

On July 12, 2006 (71 FR 39259), EPA proposed Federal Implementation Plan (FIP) provisions for the Billings/Laurel, Montana area because of our disapproval of portions of Montana's Billings/Laurel SO_2 SIP. In our proposal, we indicated that our FIP would not replace the SIP entirely, but instead would only replace elements of, or fill gaps in, the SIP.

In promulgating today's rules, EPA is fulfilling its mandatory duty under section 110(c) of the Act. Under section 110(c), whenever we disapprove a SIP, in whole or in part, we are required to promulgate a FIP. Specifically, section 110(c) provides:

> ''(1) The Administrator shall promulgate a Federal implementation plan at any time within 2 years after the Administrator—
>
> (A) Finds that a State has failed to make a required submission or finds that the plan or plan revision submitted by the State does not satisfy the minimum criteria established under [section 110(k)(1)(A)],[1] or
>
> (B) Disapproves a State implementation plan submission in whole or in part, unless the State corrects the deficiency, and the Administrator approves the plan or plan revision, before the Administrator promulgates such Federal implementation plan.''

Thus, because we disapproved portions of the Billings/Laurel SO_2 SIP, and the attainment demonstration, we are required to promulgate a FIP.

Section 302(y) defines the term ''Federal implementation plan'' in pertinent part, as:

> ''[A] plan (or portion thereof) promulgated by the Administrator to fill all or a portion of a gap or otherwise correct all or a portion of an inadequacy in a State implementation plan, and which includes enforceable emission limitations or other control measures, means or techniques (including economic incentives, such as marketable permits or auctions or emissions allowances) * * *.''

More simply, a FIP is ''a set of enforceable federal regulations that stand in the place of deficient portions of a SIP.'' *McCarthy* v. *Thomas,* 27 F.3d 1363, 1365 (9th Cir. 1994). As the Court of Appeals for the D.C. Circuit noted in a 1995 case, FIPs are powerful tools to remedy deficient state action:

> The FIP provides an additional incentive for state compliance because it rescinds state authority to make the many sensitive technical and political choices that a pollution control regime demands. The FIP provision also ensures that progress toward NAAQS attainment will proceed notwithstanding inadequate action at the state level.

Natural Resources Defense Council, Inc. v. *Browner,* 57 F.3d 1122, 1124 (D.C. Cir. 1995).

When EPA promulgates a FIP, courts have not required EPA to demonstrate explicit authority for specific measures: ''We are inclined to construe Congress' broad grant of power to the EPA as including all enforcement devices reasonably necessary to the achievement and maintenance of the goals established by the legislation.'' *South Terminal Corp.* v. *EPA*, 504 F.2d 646, 669 (1st Cir. 1974). As the Ninth Circuit stated in a case involving a FIP with far-reaching consequences in Los Angeles: ''The authority to regulate pollution carries with it the power to do so in a manner reasonably calculated to reach that end.'' *City of Santa Rosa* v. *EPA*, 534 F.2d 150, 155 (9th Cir. 1976), *vacated and remanded on other grounds sub nom. Pacific Legal Foundation* v. *EPA*, 429 U.S. 990 (1976).

In addition to giving EPA remedial authority, section 110(c) enables EPA to assume the powers that the state would have to protect air quality, when the state fails to adequately discharge its planning responsibility. As the Ninth Circuit held, when EPA acts to fill in the gaps in an inadequate state plan under section 110(c), EPA '' 'stands in the shoes of the defaulting State, and all of the rights and duties that would otherwise fall to the State accrue instead to EPA.' '' *Central Arizona Water Conservation District* v. *EPA*, 990 F.2d 1531, 1541 (9th Cir. 1993). As the First Circuit held in an early case:

> ''[T]he Administrator must promulgate promptly regulations setting forth 'an implementation plan for a State' should the state itself fail to propose a satisfactory one * * * The statutory scheme would be unworkable were it read as giving to EPA, when promulgating an implementation plan for a state, less than those necessary measures allowed by Congress to a state to accomplish federal clean air goals. We do not adopt any such crippling interpretation.''

South Terminal Corp. v. *EPA, supra,* at 668 (citing previous version of section 110(c)).

The Billings/Laurel SO_2 FIP establishes emission limits and compliance determining methods for four sources located in Billings/Laurel, Montana, to replace/fill gaps in portions of the SIP we disapproved, and to

[1] Section 110(k)(1) requires the Administrator to promulgate minimum criteria that any plan submission must meet before EPA is required to act on the submission. These completeness criteria are set forth at 40 CFR 51, Appendix V.

support our attainment demonstration. Three of the sources are petroleum refineries: CHS Inc., ConocoPhillips (including the Jupiter Sulfur facility), and ExxonMobil. The fourth source is Montana Sulphur & Chemical Company, which provides sulfur recovery for the ExxonMobil refinery.

The following is a summary of the major components of our FIP rule:

(1) The FIP establishes flare emission limits at all four sources (150 lbs SO_2/3-hour period at all but the Jupiter Sulfur flare, 75 lbs SO_2/3-hour period shared limit for the Jupiter Sulfur flare and the Jupiter Sulfur SRU/ATS stack) and monitoring methods to determine compliance with those limits. The FIP includes an affirmative defense to penalties for violations of the flare limits that occur during malfunction, startup, and shutdown periods. To determine flare emissions, the FIP requires concentration monitoring (which can consist of continuous monitoring, grab sampling, or integrated sampling) and continuous flow monitoring.

(2) The FIP prohibits the burning of sour water stripper overheads in CHS Inc.'s main crude heater and requires CHS Inc. to keep the valve between the old sour water stripper and the main crude heater closed, chained, and locked.

(3) The FIP provides that emission limits for identified ExxonMobil refinery fuel gas combustion units are contained in the SIP, and establishes compliance determining methods for instances in which the H_2S concentration in the refinery fuel gas stream exceeds 1200 ppmv. These methods involve the use of length-of-stain detector tubes on a once-per-hour frequency.

(4) The FIP provides that emission limits for ExxonMobil's Coker CO Boiler stack, when ExxonMobil's Coker unit is operating and Coker unit flue gases are burned in the Coker CO Boiler, are contained in the SIP. The FIP establishes compliance determining methods for these emission limits that require measurement of the SO_2 concentration and flow rate in the Coker CO Boiler stack using CEMS.

(5) The FIP establishes emission limits on MSCC's SRU 100-meter stack, based on good engineering practice (GEP) stack height credit of 65 meters, with compliance with these limits to be determined using methods already approved in the SIP. The FIP does not provide variable emission limits for this stack.

(6) The FIP establishes emission limits and compliance determining methods for MSCC's auxiliary vent stacks and SRU 30-meter stack. In addition to mass limits, the FIP establishes concentration limits on fuel burned in the units that vent to the auxiliary vent stacks and SRU 30-meter stack. These concentration limits are 160 ppm H_2S per 3-hour period and 100 ppm H_2S per calendar day. When trigger events specified in the rule occur, MSCC must measure the H_2S concentration in the fuel using length-of-stain detector tubes on a once-per-3-hour period.

(7) The FIP establishes various recordkeeping and reporting requirements.

It is important to note that, in cases where the provisions of the FIP address emissions activities differently or establish different requirements than provisions of the SIP, the provisions of the FIP take precedence. We also caution that if any of the four sources are subject to requirements under other provisions of the Act (e.g., section 111 or 112, part C of title I, or SIP-approved permit programs under part A of title I), our promulgation of the FIP does not excuse any of the sources from meeting such requirements. Finally, our promulgation of the FIP does not imply any sort of applicability determination under other provisions of the Act (e.g., section 111 or 112, part C of title I, or SIP-approved permit programs under part A of title I).

II. Issues Raised by Commenters and EPA's Response

A. FIP Not Necessary

1. Ambient Data and Historical Modeling Show Attainment

(a) *Comment (CHS Inc., COPC, ExxonMobil, NPRA, MPA, MDEQ, MSCC, WETA):* The FIP is not necessary for attainment of the NAAQS because ambient data show that the Billings/Laurel area has been for many years and continues to be in attainment with both the Federal and State SO_2 ambient air quality standards for all averaging periods.

Response: EPA does not agree that a FIP is not necessary because ambient data show attainment of the SO_2 NAAQS. Ambient monitoring is limited in time and in space. Ambient monitoring can measure pollutant concentrations only as they occur; it cannot predict future concentrations when emission levels and meteorological conditions may differ from present conditions.

EPA has long held that ambient monitoring data alone generally are not adequate for SO_2 attainment demonstrations. Additionally, a small number of ambient SO_2 monitors usually are not representative of the air quality for an area. (See reference document GGGGG, April 21, 1983, memorandum from Sheldon Meyers, Director, Office of Air Quality Planning and Standards (OAQPS), to Regional Air and Waste Division Directors, titled ''Section 107 Designation Policy Summary,'' and reference document HHHHH, September 4, 1992, memorandum from John Calcagni, Director, Air Quality Management Division, OAQPS, to Regional Air Division Directors, titled ''Procedures for Processing Requests to Redesignate Areas to Attainment.'')

Typically, modeling estimates of maximum ambient concentrations are based on a fairly infrequent combination of meteorological and source operating conditions. To capture such results on an ambient monitor would normally require a prohibitively large and expensive network. Therefore, dispersion modeling is generally necessary to comprehensively evaluate sources' impacts and to determine the areas of expected high concentrations. (*Id.*) Air quality modeling results would be especially important if sources were not emitting at their maximum level during the monitoring period or if the monitoring period did not coincide with potentially worst-case meteorological conditions. Further, ambient monitoring data are not adequate if sources are using stacks with actual heights greater than good engineering practice stack height (which indeed is the case with MSCC and ConocoPhillips) or other dispersion techniques for which SIP/FIP modeling credit is not allowed. (See also our discussion of related issues in our final action on the Billings/Laurel SO_2 SIP (67 FR 22168, 22185–22187, May 2, 2002.))

Ambient monitoring data and air quality modeling data for a particular area can sometimes appear to conflict. This is primarily due to the fact that modeling results may predict maximum SO_2 concentration at receptors where no monitors are located.

Moreover, our SIP Call for the Billings/Laurel area was based on modeled violations of the SO_2 NAAQS, not monitored violations. (See reference documents Y and Z.) We took final action on the SIP Call in our May 2, 2002, action on the Billings/Laurel SIP (67 FR 22168, 22173), and we are not revisiting it in this FIP action. It would be inconsistent and inappropriate to now rely solely on monitoring to determine necessary measures and demonstrate attainment.

It is especially important to recognize that, as a result of our partial and limited disapproval of the Billings/

Laurel SO_2 SIP, we are legally obligated to promulgate a FIP for the area. See section 110(c)(1) of the CAA, 42 U.S.C. 7410(c)(1). However, the SIP deficiencies that triggered our partial and limited disapproval were varied and were not necessarily associated with problems that could be measured at an ambient monitor. For example, one basis for disapproval of the SIP was the State's use of improper (too tall) stack height credit for MSCC in modeling attainment of the NAAQS. In the real world, emissions at the actual (100 meter) height of the stack create less impact on monitored ambient concentrations in the Billings/Laurel area than if the emissions were emitted from a lower stack. Nonetheless, we had to partially disapprove the SIP due to the State's inappropriate grant of stack height credit, and section 110(c) of the CAA requires that we correct the deficiency. Since the State did not model attainment at the proper stack height credit for MSCC's stack, it was necessary that we do so and set emission limits for the stack consistent with our attainment demonstration. We believe MSCC has consistently been meeting the emission limits we are adopting, so there may be no reduction in actual emissions from the stack, but that does not mean the CAA allows us to forego this aspect of the FIP.

Likewise, CAA sections 110(a)(2)(A) and (C) require that SIP control measures be enforceable. We disapproved several source monitoring methods because they were not adequate to determine compliance under all operating conditions. It may be impossible to measure the impact these SIP deficiencies may have on ambient SO_2 concentrations in the area, but the CAA still requires that we correct the deficiencies. Regarding the emission limits and compliance determining methods for the flares, the State-only flare limits, which the State relied on to demonstrate attainment, may have positively impacted flare emissions in the past few years. However, the State did not include the State-only flare limits or adequate compliance determining methods in the SIP. Thus, the SIP remains deficient. We now have the responsibility to ensure that emission limits relied on to demonstrate attainment are included in the SIP and are practically enforceable, consistent with the requirements of section 110 of the Act.

(b) *Comment (MSCC, MDEQ):* The State's SIP modeling, along with appropriate emission limits, show attainment of the NAAQS.

Response: EPA addressed this issue in its actions on Montana's SIP submissions. As explained in those actions, EPA does not agree that the State's SIP modeling, along with appropriate emission limits, show attainment of the NAAQS. EPA's formal determinations regarding the attainment demonstration and emission limits were made in final actions on May 2, 2002 (67 FR 22168) and May 22, 2003 (68 FR 27908). The FIP fills the gaps for the provisions we disapproved.

We note that we have not reopened our SIP actions as part of this action. Thus, to the extent the commenters are expressing their disagreement with EPA's actions on the SIP, their comments are not relevant to this action, and EPA is not re-considering them here.

(c) *Comment (ExxonMobil):* EPA's proposed FIP ignores the substantial improvement in air quality in the Billings/Laurel area and instead predicts exceedances of NAAQS based upon modeling performed as long as 15 years ago. EPA's FIP proposal must be further examined in light of subsequent developments, including correct modeling and consideration of currently available information indicating compliance.

Response: See response to comment II.A.1.(a), above, regarding ambient data and response to comments in section II.E., below, regarding modeling.

2. Existing Controls Sufficient

(a) *Comment (MDEQ, MSCC, COPC, ExxonMobil, MPA, NPRA, WETA):* The FIP offers questionable improvements because the existing control plan provisions submitted by the state are adequate and contain sufficient SO_2 emission controls and strategies and provide for the implementation, maintenance, and enforcement of the SO_2 NAAQS.

Response: EPA addressed the adequacy of Montana's SIP submissions in its final actions on the SIP. As explained in those actions, EPA does not agree that the State's SIP control plan provisions are adequate and contain sufficient SO_2 emission controls to show attainment of the NAAQS. EPA's formal determinations regarding the attainment demonstration and emission control plan were made in final actions on May 2, 2002 (67 FR 22168) and May 22, 2003 (68 FR 27908). In our May 2002 and May 2003 actions we disapproved various control plan provisions. The FIP fills the gaps for the provisions we disapproved. The FIP offers necessary improvements to the SIP by imposing new emission limits and reliable compliance determining methods to ensure attainment of the SO_2 NAAQS.

We note that we have not reopened our SIP actions as part of this action. Thus, to the extent the commenters are expressing their disagreement with EPA's actions on the SIP, their comments are not relevant to this action, and EPA is not re-considering them here.

(b) *Comment (CHS Inc., WETA, COPC, MDEQ, ExxonMobil, NPRA):* In addition to the SIP, SO_2 emissions in the Billings/Laurel area have decreased as a result of Consent Decrees and Montana Air Quality Permit changes. These limits are all federally enforceable because there are Title V operating permit conditions (CHS Inc.). EPA did not consider these emission reductions in making its determination that the FIP was necessary. The FIP proposal does not otherwise acknowledge the practical effects of the recent consent decrees between the primary refinery parties subject to regulation as well as other permitting actions that have occurred over the past eight years (MSCC, COPC).

Response: EPA did not consider the emission reductions that resulted, or will result, from the consent decrees and/or State permit revisions to determine that the FIP was necessary or include the emission reductions in our modeling for several reasons.

First, the FIP is required because we disapproved the SIP, and the State has not made revisions to the SIP to address the SIP's flaws. As noted in other responses, because we disapproved the SIP, we have a legal obligation to promulgate a FIP. See CAA section 110(c), 42 U.S.C. 7410(c).

Second, even though permits and consent decrees are federally enforceable, some permits can be revised without EPA approval and consent decrees have a limited lifespan.[2] To protect the integrity of the attainment demonstration, and our statutory role in assessing SIP/FIP adequacy, we believe that stationary source emission limits necessary to demonstrate attainment must be included in the FIP (or approved SIP). See, *e.g.*, CAA sections 110(a)(2)(A), 110(i), 110(k)(3)–(6), and 110(l), 42 U.S.C. 7410(a)(2)(A), (i), (k)(3)–(6), and (l). This ensures that changes to those limits will only be made with EPA's approval as a SIP or FIP revision,

[2] The State can revise construction permits without EPA approval, and, while EPA has authority to object to Title V permits, that authority is only available to ensure that underlying applicable requirements are included in the Title V permits. Thus, if those underlying requirements change, EPA may have no recourse at the Title V stage.

following notice and comment rulemaking.

Third, the consent decrees and permitting actions, for some emission points, do not contain SO_2 emission limits that are consistent with the averaging times of the SO_2 NAAQS, specifically, the 3-hour and calendar day averaging periods. For example, the SIP establishes 3-hour, calendar day, and calendar year emission limits for CHS Inc.'s FCC regenerator/CO boiler stack. The January 17, 2007, final State construction permit (reference document IIIII) and the consent decree (reference document JJJJJ) indicate that the FCC regenerator stack SO_2 emissions shall not exceed 50 ppm by volume (corrected to 0% O_2) for a 7-day rolling average [or a fresh feed of 0.3 percent by weight] and 25 ppm by volume (corrected to 0% O_2) for a 365-day rolling average. None of the commenters has suggested these limits be converted to FIP mass limits that would apply over a 3-hour averaging period, and the State has not submitted a SIP revision with such limits.

It should be noted that EPA did solicit comment on whether we should limit the main flares to 500 pounds of SO_2 per calendar day. This value is consistent with the trigger point for certain analyses contained in settlements (i.e., consent decrees) between the United States and CHS Inc., ConocoPhillips, and ExxonMobil. We received limited comments on this proposal and have decided to keep the limit at 150 pounds of SO_2 per 3-hour period to maintain consistency with the State's State-only limit.

B. EPA Exceeded Its Authority in Proposing a FIP

1. State's Responsibility

(a) *Comment (WETA, MPA, ExxonMobil):* EPA's role is limited to determining whether or not a SIP is attaining and maintaining the NAAQS. Selecting the source mix and various control measures to achieve these ends has been determined by courts to be the sole responsibility of the state. EPA's proposed action intrudes on the primary responsibility of the state and local governments to implement the Clean Air Act (MSCC).

Response: The commenters' characterization of EPA's role regarding SIPs is not accurate. We lack authority to question a state's choices of emissions limitations *if they are part of a plan that satisfies the standards of the Clean Air Act. Train* v. *Natural Resources Defense Council,* 95 S.Ct. 1470, 1481–1482 (1975). In our 2002 and 2003 actions, we found that Montana's SO_2 SIP for Billings/Laurel did not fully satisfy CAA requirements. See 67 FR 22168, May 2, 2002 and 68 FR 27908, May 22, 2003. Thus, pursuant to section 110(c) of the CAA, 42 U.S.C. 7410(c), we are required to promulgate a FIP. In doing so, we stand in the state's shoes and have authority to determine emissions limitations and other measures for specific sources to fill gaps in the SIP. *Central Arizona Water Conservation District* v. *EPA,* 990 F.2d 1531, 1541 (9th Cir. 1993); *South Terminal Corp.* v. *EPA,* 504 F.2d 646, 668 (1st Cir. 1974) (citing previous version of CAA section 110(c)).

We note that we have not reopened our SIP actions as part of this action. Thus, to the extent the commenters are expressing their disagreement with EPA's actions on the SIP, their comments are not relevant to this action, and EPA is not re-considering them here.

(b) *Comment (WETA):* Since the State of Montana has already taken appropriate actions to reduce sulfur dioxide emissions, EPA does not have the authority under the CAA to adopt the proposed FIP.

Response: See response to comment II.B.1.(a), above. The adequacy of the State of Montana's actions has already been considered by EPA in other rulemaking actions that addressed the State's SIP submission. Those actions are not the subject of EPA's present rulemaking, which promulgates the necessary measures to remedy the deficiencies EPA identified in its prior SIP reviews.

(c) *Comment (MSCC):* States have primacy, and because EPA did not choose to exercise its rights in the comprehensive and competent state decision process, EPA may not default and then act.

Response: Under section 110(c) of the Act, EPA is not required to participate in a state's administrative process before promulgating a FIP.

(d) *Comment (MSCC, MDEQ, ExxonMobil):* EPA has no authority to question the wisdom of a state's choices of emission limitations if they are part of a plan that satisfies the standards of § 110(a)(2) of the Act. As long as the ultimate effect of a state's choice of emission limitations is compliance with the NAAQS, the state is at liberty to adopt whatever mix of emission limitations it deems best suited to its particular situation. There is no evidence provided by EPA that Montana reached its material conclusions or choices in the SIP unreasonably. Additionally, EPA has not shown that additional controls beyond the SIP measures adopted by Montana are necessary to meet or assure SO_2 NAAQS compliance.

Response: See our responses to comments II.A.1.(a) and II.B.1.(a), above. Much of this comment pertains to our actions on Montana's SIP. We are not revisiting or reopening comment on those actions here. Our basis for finding that the SIP was not adequate to ensure attainment and meet other CAA requirements is described in our actions on the SIP. Once we disapprove part or all of a required SIP, section 110(c) of the Act requires that we issue a FIP. Our obligation in this action is to correct the SIP deficiencies we previously identified. Thus, the findings that triggered our responsibility to promulgate a FIP were established in the prior rulemaking actions reviewing Montana's SIP. EPA is not required to repeat those findings in the FIP rulemaking itself.

(e) *Comment (ExxonMobil):* EPA cannot propose a FIP to replace a SIP, unless the SIP is substantially inadequate to ensure compliance with the CAA.

Response: The commenter misstates the standard for promulgation of a FIP. Section 110(c) of the CAA is straightforward—a FIP is required if (1) EPA finds that a state has failed to make a required submission; (2) EPA finds that a plan submission does not satisfy the completeness criteria established under section 110(k)(1)(A) of the CAA; or (3) EPA disapproves a SIP in whole or in part. EPA partially disapproved the Billings/Laurel SO_2 SIP; thus, a FIP is required. Contrary to the commenter's assertion, the obligation to promulgate a FIP is not contingent on an EPA finding of substantial inadequacy. As explained above, the findings triggering our responsibility to promulgate a FIP were made in the prior actions reviewing Montana's SIP.

(f) *Comment (MSCC):* The commenter claims EPA's action violates the Tenth Amendment to the Constitution. The commenter also claims EPA's FIP is dictating the required controls in contravention of the holdings in *Commonwealth of Virginia* v. *EPA*, 108 F.3d 1397 (D.C. Cir. 1997) and *Bethlehem Steel* v. *Gorsuch,* 742 F.2d 1028 (7th Cir. 1984).

Response: Our FIP compels no action on the part of the State and is not coercive vis-à-vis the State. Our FIP contains requirements applicable to four private companies. The Tenth Amendment is not implicated. Nor do our actions contravene *Commonwealth of Virginia* or *Bethlehem Steel*. The former case held that EPA cannot, in a SIP Call, dictate that a state adopt a particular control measure to

demonstrate attainment of the NAAQS. EPA had issued a SIP Call finding that the SIPs of 12 states were inadequate to meet the ozone NAAQS and in its SIP Call rule, specified that the states needed to submit SIPs that included the California Low Emission Vehicle Program. In this matter, we are promulgating a FIP, not issuing a SIP Call. We are not directing any action by the State. Thus, the *Commonwealth of Virginia* case is not relevant to our FIP. *Bethlehem Steel* is also not relevant to our FIP action. In that case, the 7th Circuit held that it was improper for EPA to partially approve an Indiana SIP revision so as to render it more stringent than the State intended. We are promulgating a FIP in this action, not acting on a SIP; thus, *Bethlehem Steel* does not apply. As we note elsewhere, once we disapprove a SIP, we are required to promulgate a FIP, and in promulgating the FIP, we stand in the state's shoes. See section 110(c) of the CAA, 42 U.S.C. 7410(c); *Central Arizona Water Conservation District* v. *EPA,* 990 F.2d 1531, 1541 (9th Cir. 1993).

(g) *Comment (MSCC):* The commenter argues that the cases EPA cited in the preamble to the proposed Billings/Laurel FIP, regarding its FIP authority, do not speak to the central question—''When and on what authority may the EPA undertake the draconian act of displacing a state's implementation plan?'' The commenter argues that the question is particularly sensitive in this case because the State and the sources spent years negotiating the SIP.

Response: As noted in response to comment II.B.1.(e), the CAA requires that we promulgate a FIP whenever we disapprove a SIP, in whole or in part. While we are sensitive to the fact that the State and sources spent years negotiating the SIP, that does not change our obligation under the CAA.

2. No Adequate Basis for FIP

(a) *Comment (MSCC, ExxonMobil):* Because EPA must find substantive noncompliance with some provision of the Clean Air Act, specifically, failure to attain NAAQS, and because that finding of substantial inadequacy must be clearly stated, the present FIP decision must fall. It is inadequate on both counts. EPA has not provided any evidence that the State plan is not working.

Response: See our response to comment II.B.1.(e), above. The evidence supporting EPA's determinations regarding the adequacy of Montana's SIP is contained in the record for those rulemaking actions, and need not be repeated here. EPA's disapproval of the SIP triggered the obligation for a FIP. No separate showing that the State plan is not working or does not meet CAA requirements is needed as part of this action. Commenters' comments regarding EPA's SIP actions are not relevant for this rulemaking.

(b) *Comment (ExxonMobil):* Even when the EPA has statutory authority for a particular rule, its technical decisions about the level of pollutant reduction needed to comply with the CAA and the control strategies necessary to meet the level of pollutant reduction must be rational. Courts ''confronted with important and seemingly plausible objections going to the heart of a key technical determination * * * '' will not presume that EPA would never behave irrationally. *South Terminal Corporation* v. *Environmental Protection Agency*, 504 F.2d 646, 665 (1st Cir. 1974). In *South Terminal Corporation*, various interested parties challenged EPA's FIP on technical grounds. *Id.* at 662–66. The court held that EPA failed to adequately support its decision to promulgate the rules contained in the FIP and remanded the case to EPA to develop the record. *Id.* at 666. The court questioned EPA's position in light of contradictory modeling and data, concluding that ''it is not clear whether or not the ambient air at Logan meets, or will without controls by mid-1975 will meet, the national primary standard.'' *Id.* 664. Similarly, in the present FIP proposal, EPA has neither determined appropriate current modeling nor used currently available information.

Response: The standards for judicial review of this rulemaking action are contained in section 307(d)(9) of the CAA, 42 U.S.C. 7607(d)(9). We believe the emission limitations and other requirements in this FIP are reasonable and that the situation in the cited case is not analogous.[3] The commenter has not identified any modeling that contradicts our attainment demonstration, which forms the basis for the FIP's emission limitations; nor has the commenter shown that a different model would result in substantially different emission limitations. Our responses pertaining to model selection and input data are contained in section II.E., below. Further, we note that it does not appear the commenter is suggesting that the entire SIP should be re-done based on more current modeling and more up-to-date information. On the contrary, the commenter seems satisfied with the EPA-approved emission limitations in the SIP,[4] which were based on the very modeling that the commenter now claims is unreliable.

(c) *Comment (ExxonMobil):* Citing *Hall* v. *United States Environmental Protection Agency,* 273 F.3d 1146, 1159 (9th Cir. 2001), the commenter states that in acting on a SIP, the test EPA applies is to ''measure the existing level of pollution, compare it with the national standards, and determine the effect on this comparison of specified emission modifications.'' The commenter argues that in the FIP proposal, EPA did not correctly identify the existing level of pollution and ignored the substantial evidence of permanently reduced SO_2 emissions and levels in the Billings/Laurel area. The commenter also argues that EPA's authority is limited by its mandate under the CAA to ensure attainment and maintenance of the NAAQS as well as the CAA's other general requirements.

Response: See responses to comments II.A.1.(a), II.A.2(b), and II.E.1.(e) and (g). Also, the *Hall* case involved a challenge to EPA's approval of a SIP revision for Clark County, Nevada, and EPA's interpretation of section 110(l) of the CAA, which provides that EPA may not approve a SIP revision if it would interfere with attainment or other applicable requirements of the CAA. EPA asserted that its approval of the Clark County SIP revision was consistent with section 110(l) because the revision did not relax the existing SIP. The Court disagreed, holding that 110(l) requires more—a determination that the specific revision, when considered in the context of the SIP elements already in place, can meet the Act's attainment requirements. *Hall* at 1152, 1159. It was in these circumstances that the Court expected EPA to determine the extent of pollution reductions required and evaluate whether the reductions resulting from the revision would be sufficient to attain the NAAQS.

In its reference to *Hall,* the commenter appears to be conflating two disparate concepts. The *Hall* Court was addressing EPA's action on a SIP revision and indicating that EPA was not adequately evaluating whether Clark County's rule change would interfere

[3] In *South Terminal Corporation,* EPA had determined emissions reductions needed to achieve the ozone and carbon dioxide NAAQS based on monitored values that the Court found highly questionable (petitioners claimed the ozone monitor was defective). *South Terminal Corporation,* 504 F.2d 646, 662 (1974). The commenter seems to suggest that the Court rejected EPA's modeling approach, but in fact, the Court was satisfied with the rollback modeling that EPA used. *Id.*

[4] Among other things, the commenter asserts that the state SIP requirements are adequate to protect the NAAQS. See reference document YYYY, page 27.

with attainment and other CAA requirements. The Court was not establishing a standard for a FIP or indicating that EPA was requiring more than necessary for the area, which seems to be what the commenter is suggesting in the case of the Billings/Laurel FIP. As we explain in greater depth elsewhere in this notice, we are not starting from scratch with our FIP. Instead, we are working within the framework of the existing Billings/Laurel SIP to fill the gaps resulting from our partial and limited disapproval of discrete SIP elements. In this unique circumstance, where only discrete elements of the SIP were deficient, the CAA does not require us to reevaluate or replace the entire SIP or the basic modeling approach upon which it was based. Nothing in the CAA requires EPA to reject an entire SIP when only certain elements within it are not approvable, and doing so, where that is not necessary to address a discrete deficiency, would be inconsistent with the basic scheme of cooperative federalism embodied in the CAA.

Nor are we required as part of this FIP to revisit our SIP Call or the bases for our SIP disapproval. Our task is to fix the portions of the SIP that were deficient. It is reasonable to continue to treat as valid the factors we found adequate to support the portions of the SIP we approved, and augment and/or replace those factors that we found inadequate. In fact, based on the holding in *Train* v. *NRDC,* 421 U.S. 57 (1975), recited by this commenter and others, it would be inappropriate for EPA to now reject or replace the portions of the SIP that we approved as meeting the CAA's requirements, because to do so would be to intrude on the State's authority under the CAA to establish the mix of controls for the area.[5] The State, of course, remains free to submit a SIP revision that reflects a different mix of controls across all the sources. This would be the mechanism, for example, whereby the State could adopt SIP limits that correlate to refinery consent decree limits.[6] If the State were to submit such a revision, we would evaluate the revision according to the Act, our regulations, and the relevant cases.

(d) *Comment (ExxonMobil):* EPA's proposal imposes costly technology requirements not rationally designed to achieving their stated objectives. While EPA has authority to impose an emission limitation, the emission limitation must be necessary to attain NAAQS. *City of Santa Rosa* v. *EPA*, 534 F.2d 150, 155 (9th Cir. 1976), vacated on other grounds, 429 U.S. 990 (1976). The EPA derived its authority in *City of Santa Rosa* from its statutory mandate to ensure compliance with NAAQS and the fact that no alternative to its proposal was adequate to ensure compliance with NAAQS. It is clear that Montana's existing SIP, supplemented as it is by further state and federally enforceable consent decrees are a more than adequate alternative.

Response: The cited case actually stands for the proposition that EPA's authority to adopt measures to meet the NAAQS is expansive. EPA adopted a FIP provision that would have required a substantial reduction (up to 100%) in the supply of gasoline to major metropolitan areas in California, including Los Angeles. Even the EPA acknowledged that the rule would cause severe social and economic disruption, and the EPA Administrator at the time publicly advocated amendments to the CAA to provide relief from EPA's own FIP rule. Nonetheless, the Court held that economic and social disruption are not cognizable if (1) a measure is necessary to attain the NAAQS; (2) there is no statutory limitation on EPA's authority to adopt the measure; and (3) there are no equally effective, less burdensome alternatives. *City of Santa Rosa* at 151–154.

The measures EPA is promulgating in this FIP are in no way comparable to the reduction in gasoline supply at issue in the *City of Santa Rosa* case. Our FIP is narrowly tailored to fill the gaps in the Billings/Laurel SIP. Section 110(c) requires us to promulgate the FIP. There is no statutory limitation on our authority to adopt the measures we are adopting. On the contrary, section 110(a)(2)(A) of the Act requires enforceable emission limitations as necessary or appropriate to meet the applicable requirements of the Act, which include attainment and maintenance of the SO_2 NAAQS. Using ISC, the same model the State used to set the commenter's emission limits in the SIP, we have determined emission levels consistent with attainment and established corresponding emission limits on the flares, MSCC's main stack, and other emission units, whose emission limits we disapproved in our SIP action. While the authority to require monitoring, recordkeeping, and reporting requirements can be inferred from CAA sections 110(a)(2)(A) and (C), section 110(a)(2)(F) of the Act specifically indicates that the EPA Administrator may prescribe the installation, maintenance, and replacement of monitoring equipment by stationary sources, as well as reporting requirements. Our requirement for the refineries and MSCC to install monitoring equipment to measure flare gas flow and concentrations is consistent with this authority and is rationally related to the goals of the FIP, i.e., to ensure attainment and maintenance of the SO_2 NAAQS. We do not believe estimating flare emissions or emissions from other units is a sufficient substitute for real-time monitoring for purposes of this FIP; estimation is not an equally effective technique.

The commenter argues that the existing SIP and the State and federally enforceable consent decrees are a more than adequate alternative to our FIP requirements. This comment ignores the fact that we disapproved portions of the SIP as not meeting the CAA's requirements. Elsewhere we explain that the consent decree provisions are not sufficient to meet the CAA's requirements under section 110 related to attainment and maintenance of the NAAQS. See, *e.g.*, sections II.A.2.(b), II.D.4., and II.E.1.(e).

(e) *Comment (MSCC):* EPA's failure to issue the FIP within the CAA's two-year deadline is important in this case. As a result of EPA's delay, EPA should have to consider the cleanup of emissions that has occurred and significant changes in modeling technology.

Response: We regret that it has taken this long to issue the FIP. We disagree that missing the two-year deadline obviates our duty or the need for the FIP. The State has not submitted a SIP revision correcting the portions of the SIP that we disapproved, despite the passage of time. Regarding the argument that we should have considered the reduction in emissions since we disapproved the SIP, see our responses to comments in section II.A. In section II.E, we respond to comments arguing

[5] To the extent the commenter is arguing that we may do no more in this FIP than appears minimally necessary to attain the NAAQS, we reject that notion as well. See, e.g., *Central Arizona Water Conservation District* v. *EPA,* 990 F.2d 1531, 1541 (9th Cir. 1993) (EPA ''stands in the shoes of the defaulting State, and all of the rights and duties that would otherwise fall to the State accrue instead to EPA.'') Under the CAA, states are not restricted to barely meeting the NAAQS. In fact, the opposite is true—states may exceed minimum requirements. See CAA section 116, 42 U.S.C. 7416. In any event, our modeled attainment demonstration resulted in projected values just at the 24-hour SO_2 NAAQS (365 $\mu g/m^3$) and just below the 3-hour SO_2 NAAQS (1291.5 $\mu g/m^3$). However, we think we had discretion to adopt limits (to replace those we disapproved) consistent with modeled ambient concentrations further below the NAAQS, if we had felt a larger margin of safety was justified to ensure attainment and maintenance.

[6] As we allude to in sections II.A.2.(b), II.D.4., and II.E.1.(e), the consent decree limits would need to be translated into limits that support an attainment demonstration for the SO_2 NAAQS. In sections II.A.2.(b) and II.D.4., we identify some of our concerns with the consent decree limits.

that we should have used newer modeling technology.

C. Flare Monitoring

1. Flare Flow Monitoring

(a) *Comment (MSCC):* The core flowmeter technology application for flare systems seems to be an established technology, with thousands of installations completed around the world on other types of gas and liquid streams. However, none was identified that is following the precise specifications of the FIP proposal. Installation and operation of a flow meter in flare gas service at MSCC are probably achievable today, but not at the flow range below 1 fps, and not with conventional QA/QC procedures. Flow monitors have a difficult time measuring or reliably detecting low flow velocities (under approximately 1.0 fps) without false positives or false negatives. EPA should revise the proposed rule that currently indicates:

''[t]he minimum detectable velocity of the flow monitoring device(s) shall be 0.1 feet per second (fps). The flow monitoring device(s) shall continuously measure the range of flow rates corresponding to velocities from 0.5 to 275 fps and have a manufacturer's specified accuracy of ±5% over the range of 1 to 275 fps.

The revised rule should read ''[t]he minimum resolution of the flow monitoring device(s) shall be 0.1 feet per second (fps) when measuring flow rates above 1.0 fps. The device(s) shall continuously measure the range of flow rates corresponding to velocities from 1.0 to 275 fps and have a manufacturer's specified accuracy of ±5% over the range of that range.''

The rule should also clarify if ''accuracy'' is intended to be 5% of the full-scale range of the instrument (13.7 fps is 5% of 275 fps), or if this is intended to be 5% of the measured flow, which would be 0.05 fps at a flow of 1 fps, and would clearly be non-achievable with a resolution of 0.1 fps.

Response: EPA proposed the volumetric flow monitoring specifications based on what we saw was achievable in vendor literature (see reference documents NN and OO) and what was being required by regulation in the Bay Area Air Quality Management District (BAAQMD) (see reference document LL) and South Coast Air Quality Management District (SCAQMD) (see reference document CCC).

The commenter asserts that installation and operation of a flow meter at the flow range below 1 fps are not achievable. However, various sources indicate that ultrasonic flow meters can measure in the range of 0.1 to 1 fps. For example, in ''Flare Gas Ultrasonic Flow Meter,'' J.W. Smalling, L.D. Brawsell, L.C. Lynnwoth and D. Russel Wallace, Proceedings Thirty-Ninth Annual Symposium on Instrumentation for the Process Industries, 1984, the authors reported ''initially, a modest objective was established to develop an ultrasonic flow switch capable of detecting leaks in flare lines corresponding to flow velocity on the orders of 0.3 ms/ (1 ft/s). As testing continued, however, it became apparent that the equipment could measure flows below 0.03 m/s (0.1ft/s) and up to at least 6 m/s (20 ft/s) in flare stacks * * *'' (see reference document KKKKK). See also reference document OO, ''the DigitalFlowGF868 meter achieves rangeability of 2750 to 1. It measures velocities from 0.1 to 275 ft/s (0.03 to 85 m/s) in both directions, in steady or rapidly changing flow, in pipes from 3 in. to 120 in. (76 mm to 3 m) in diameter.''

Additionally, the BAAQMD (see reference document LL) and SCAQMD (see reference document CCC) require flow meters on flares. BAAQMD requires that the minimum detectable velocity shall be 0.1 fps and the SCAQMD requires monitors with a velocity range of 0.1 to 250 fps. Based on conversations with the BAAQMD, it appears that the refineries in the Bay Area have installed flow meters meeting the requirements of the rule (see reference document OOOOO).

Based on the above, we conclude that flow meters are available that can measure in the velocity range below 1.0 fps, and other regulatory authorities are requiring such flow meters with success.

The commenter also claims that installation and operation of a flow meter are probably not achievable with conventional QA/QC procedures. The QA/QC procedures are discussed below in response to comment II.C.1.(d).

The commenter argues that flow monitors have a difficult time measuring or reliably detecting low flow velocities (under approximately 1.0 fps) without false positives or false negatives. As indicated in the response to comment II.C.1.(b) below, there are approaches available for improving measurement accuracy in the 0.1 to 1.0 fps range. In addition, as the response to comment II.C.1.(b) indicates, in the final FIP we are specifying a separate accuracy range for the velocity range of 0.1 to 1 fps. Finally, we describe how we are addressing the false positive and false negative flows in response to comment II.C.1.(c).

The commenter asked that the rule clarify if ''accuracy'' of the instrument is intended to be 5% of the full-scale range of the instrument or 5% of the measured flow. In the rule, we have clarified that ''accuracy'' of the instrument is the accuracy of the measured flow and not the ''full-scale range'' of the instrument.

The commenter also suggests some changes to the rule. Apart from adding a separate accuracy range for the velocity range of 0.1 to 1 fps and clarifying that accuracy is based on the measured flow, we are not making any additional changes to this aspect of the rule. We explain our reasoning in the response to this comment II.C.1.(a) and in the responses to comments II.C.1.(b)–(d), below.

(b) *Comment (ExxonMobil, WSPA):* Manufacturers of flow monitoring instrumentation publish impressive performance specifications regarding velocity measurement range and accuracy, but often manufacturers' claims are not actually achieved in practice over the long term. To achieve a high level of measurement performance in the field requires adequate lengths of straight flare header pipe upstream and downstream of the monitor, the absence of flow disturbances, etc. Where these criteria cannot be met, the advertised or predicted performance of the flow monitoring system may not be fully realized in practice. MSCC claimed that significant piping modifications and possible flare relocation would be required to provide such runs at accessible locations. CHS Inc. asserted that it is likely that the CHS refinery flare header will not have adequate distances of undisturbed piping for ideal installation. In this case, either major, costly piping modification will be required or the accuracy criteria will not be achievable.

Response: The commenters are correct that piping modifications may be appropriate to optimize the measurements. Each flare system will have unique flow measurement location issues and will have to be addressed on a case-by-case basis. Sources may need to work with the flow monitor manufacturer and flow testers to assure that the monitors meet the FIP's specifications for accuracy and representativeness and manufacturer's requirements for assuring ongoing equipment performance.

In addition to making piping modifications (e.g. flow straighteners), other approaches are available to improve the measurement accuracy in the 0.1 to 1.0 fps range. Among the approaches are the use of additional monitoring paths, monitoring paths of longer length, and unconventional monitor configurations and path locations. Another approach involves

the use of Computer Fluid Dynamics (CFD) for the existing piping. CFD analysis has been used to provide correction factors for a series of velocities across the range of flow velocities. For example, these factors have been used to correct flow measurement data for disturbances caused by upstream pipe irregularities. These approaches are discussed in ''A Total Approach to Flare Gas Flow Measurement for Environmental Compliance,'' Gordon Mackie, Jed Matson and Mike Scelzo, Institute of Measurement and Control—Environmental Conference 2006. (See reference document LLLLL.) (See also Note to Billings/Laurel SO_2 FIP File regarding conversations with GE Sensing (reference document MMMMM)).

Finally, to address concerns regarding the measurement accuracy in the 0.1 to 1.0 fps range, we are revising the rule to indicate that the flow monitor must have a manufacturer's specified accuracy of ± 20% over the range 0.1 to 1 fps. Based on conversations with a vendor, we believe this is achievable. The vendor indicated that they have provided methodologies for sources to meet the SCAQMD rule, which also requires 20% accuracy in the 0.1 to 1.0 fps range. Methodologies include a second interrogation path or straightening of pipe. (See reference document MMMMM.)

(c) *Comment (ExxonMobil, WSPA, NPRA, MSCC):* Consistently achieving low flow detection limits can be very difficult. Spurious signal, resulting in ''eddy'' currents and back-and-forth flows in the flare header, can easily limit the detection and accuracy of low flow readings. Furthermore, sometimes a flow monitor will show an indication of flow even though water seals ahead of the flare stack remain intact (i.e., there is not flow to the flares). Other regulations in other jurisdictions allow the sources other means to positively determine when the flare is not operating (e.g., flare on/off monitoring device, pressure of water seal). ExxonMobil recommends that similar language be considered by the stakeholder process for inclusion in the EPA's proposed FIP, and thereby remove the uncertainty of low flow reading. MSCC claimed that the EPA proposed FIP language should be revised to allow flare operations to be monitored by other means, and to disregard low flow readings when the flare is not operating to eliminate falsely reported SO_2 emissions, when in fact there are none.

Response: We agree that it is appropriate to include in the regulation the ability to use other secondary means to determine whether flow is reaching the flare when the flow monitor indicates low flow. If the secondary device indicates that no flow is going to the flare, yet the continuous flow monitor is indicating flow, the presumption will be that no flow is going to the flare. We have revised the final rule to allow the use of flare water seal monitoring devices to determine whether there is flow going to the flare, in addition to the continuous flow monitoring device. See response to comment II.F.1.(a) regarding the comment seeking a stakeholder process.

(d) *Comment (ExxonMobil, WSPA):* A limitation of flare gas monitoring systems is the inability to provide for an independent ''in situ'' verification of accuracy. For example, there is no practical way to vary the flare gas flow that the monitor sees, and no practical way to utilize a reference method. Consequently, the calibration of a monitor is performed electronically, and the demonstration of accuracy is based on that calibration method. MSCC asserted that the proposed FIP does not provide adequate guidance to allow development of an acceptable QA/QC system for routine calibration or daily checks of the system. Without clear guidance, it is not possible to specify a system for a systems integrator (DAS/reporting) or an end-user to design or build a system to accomplish these checks.

Response: Since refinery flares contain highly variable flows and highly combustible material, in situ verification of flow measurement accuracy is difficult. For that reason, the performance specifications in the FIP rely in large part on procedures developed by the ultrasonic flow monitor manufacturers [7] for commissioning monitors to assure the monitors will meet performance specifications on an ongoing basis. Manufacturers have established procedures for conducting annual or more frequent verifications of the performance of installed flow monitors as well as for the initial installation and performance verification (see reference document NNNNN). Based on manufacturer established procedures (*Id.*), we expect that the annual verification procedures will address elements such as:

1. Verification of the Flowmeter with Reference Transducers—the purpose is to evaluate all flowmeter subsystems with factory-certified ultrasonic transducers;

2. Mechanical Inspection of Flowmeter Transducers—the purpose is to visually verify the integrity of the flare gas flowmeter transducers and to clean any accumulated debris from the transducer faces;

3. Zero Flow Verification—the purpose is to evaluate the operation of the transducer pair in the flare gas process (the integrity of the original process transducers is tested in a controlled environment);

4. Input/Output Verification—the purpose is to verify the calibration of the analog I/O of the flare gas flowmeter;

5. Electronic Flow Simulation—the purpose is to demonstrate the operation of the flare gas flowmeter over the full measurement range of the instrument; and

6. Flowmeter System Reinstallation and Test—the purpose is to verify that all mechanical systems were properly aligned.

It should also be noted that since ultrasonic flow monitors do not contain any moving parts, their performance is not expected to deteriorate over time. One ultrasonic flow monitoring vendor provided information on the reliability and availability of the transducers (sensors in the flare that transmit and receive the ultrasound) they have installed. The information indicates that the 3,998 transducers installed between first quarter 2005 and first quarter 2007 had a reliability percentage of 94.32% and an availability percentage of 99.96%. (See reference documents MMMMM and XXXXXX.) (See also reference document LLLLL, ''A Total Approach to Flare Gas Flow Measurement for Environmental Compliance,'' Gordon Mackie, Jed Matson and Mike Scelzo, GE Sensing, Institute of Measurement and Control, Environmental Conference 2006, and reference document NNNNN, April 5, 2007, email from Jed Matson, GE Sensing, to Laurie Ostrand, EPA, containing flare gas flow meter procedures.

(e) *Comment (COPC):* ConocoPhillips asserts it would need to replace a GE Panametrics flare flow monitor that is well-suited to the variable flow conditions it experiences, but does not conform precisely to the proposed specifications. It is difficult to quantify what additional benefit this change would provide although the cost is significant and quantifiable. The benefit evaluation is further clouded because of the relatively recent installation of the Flare Gas Recovery Unit (FGRU). There is no flow to measure in the flare header when the FGRU is operating. The FGRU operates on a full-time basis, with the exception of nominal periods of malfunction or maintenance.

Response: As indicated above, each source will have unique issues that will have to be addressed on a case-by-case basis.

[7] Ultrasonic flow monitors will most likely be the monitors installed to meet the FIP's flow monitoring performance specifications.

We understand that ConocoPhillips has a FGRU and ExxonMobil will be installing one. We do not agree that a source with a FGRU should be exempted from monitoring flow to the flare. We still believe it is reasonable to include this requirement to gain an accurate picture of occasions when flow is going to the flare. We note that other areas that have required refinery flare monitoring (SCAQMD and the BAAQMD) have not eliminated the flare monitoring requirements at sources with FGRUs. (See Note to Billings/Laurel SO_2 FIP File regarding conversations with BAAQMD, reference document OOOOO.) However, as indicated below, we are providing sources other means to determine total sulfur concentrations in the gas stream to the flare.

Additionally, we note that the ConocoPhillips refinery in Rodeo, California has installed flare flow meters and that the refinery also has a flare gas recovery system. The ConocoPhillips San Francisco Refinery's July 2007 Flare Minimization Plan (FMP), pages 3–7, indicates that flow meters have been installed on the Main and MP30 flares per the BAAQMD Regulation 12–11–501. EPA's Billings/Laurel FIP contains flare flow monitoring specifications very similar to the specifications in BAAQMD Regulation 12–11–501. The July 2007 FMP indicates ''The installation of the flow meters provides for enhanced recognition of flaring events. The flow meters help reduce flaring by providing an accurate means to measure and provide indication as to when flaring is occurring. The flow meters are especially useful for small flaring events which may not be detectable from visual flare stack monitoring only. The meters help to track and record all instances of flaring as well as giving Unit Operators immediate indication that flaring is occurring so that they can take action to reduce flaring.'' (See reference document PPPPP.)

(f) *Comment (MSCC):* The proposed 40 CFR 52.1392(h)(2)(iii) appears to be in error. The rule indicates that ''The flare gas stream volumetric flow rate shall be measured on an actual wet basis in SCFH.'' Actual wet basis would be abbreviated as ACFH. SCFH means standard cubic feet per hour, meaning that the data has been corrected to standard temperature and pressure. The SCFH could be replaced with ACFH. Alternately, the term ''actual'' could be removed from the section, leaving ''wet basis in SCFH.'' SCFH (corrected for temperature and pressure) can also be used to compute a mass emission rate of sulfur dioxide, provided that any concentration measurements of sulfur are also made on a ''wet'' basis.

Response: The commenter is correct. We are revising the regulatory text to read: ''The flare gas stream volumetric flow rate shall be measured on an actual wet basis, converted to Standard Conditions, and reported in SCFH.''

(g) *Comment (several commenters):* Several commenters express a general concern that the technology will not be able to meet the performance specifications.

Response: See responses to comments II.C.1.(a)–(c), above.

(h) *Comment (YVAS):* YVAS concurs with the proposed volumetric flow monitoring requirements.

Response: We acknowledge receipt of the supportive comment.

2. Flare Total Sulfur Analyzers

(a) *Comment (ExxonMobil, WSPA, COPC):* SCAQMD staff was not able to identify a single commercial sulfur analyzer in service on a refinery flare system. It is unreasonable for EPA to conclude that sulfur analyzer technology is either ''available'' or ''reliable.'' MSCC was not able to identify any installations where flare gas monitoring was, in fact, covering a range from 0–100% sulfur.

Response: EPA has identified two sources where analyzers are on lines leading to the refinery flare. Specifically, the Tesoro refinery in the Bay Area, California, has two Thermo Electron Tracker XP continuous H_2S analyzers. The Tesoro analyzers are dual range instruments, 0–1% and 0–5% (see reference document OOOOO). Additionally, the Shell refinery in Puget Sound, Washington, uses an analyzer that thermally oxidizes total sulfur to SO_2 and then measures the SO_2. The analyzer can measure up to 40,000 ppm of SO_2 (see reference document QQQQQ). Finally, as indicated in the response to comment II.C.2.(b) below, the SCAQMD recently reported on a pilot project study, testing a total sulfur analyzer at the BP Carson facility in southern California, and indicated that the ''preliminary results have demonstrated the feasibility of measuring total sulfur emissions from vent gases directed to flares.''

The proposed FIP did not specifically require that an analyzer be capable of measuring in the range from 1–100% sulfur, although the preamble implied and the record reported conversations with vendors indicating that analyzers could measure in the range from 1–100% sulfur. We are clarifying the final FIP to indicate that the total sulfur analyzers should measure in the range of concentrations that are normally present in the gas stream to the flare. In cases when the total sulfur analyzer is not working or where the concentration of the total sulfur exceeds the range of the monitor, methods established in the flare monitoring plan required by the FIP shall be used to determine total sulfur concentrations, which shall then be used to calculate SO_2 emissions. In quarterly reports, sources shall indicate when these other methods are used.

(b) *Comment (ExxonMobil, WSPA):* SCAQMD Rule 1118 had an important provision requiring an analyzer pilot project, and one Los Angeles area refiner is currently engaged with a sulfur analyzer demonstration project. It is conceivable that the pilot project could result in the conclusion that the analyzer being evaluated could not provide sufficient accuracy, that the system was not maintainable, or that there were other problems.

Response: On June 1, 2007, the SCAQMD presented to its Governing Board an ''Implementation Status Report for 2006 for Rule 1118—Control of Emissions from Refinery Flares.'' Agenda No. 27 discusses the total sulfur (TS) analyzer pilot project at the BP refinery in Carson and indicates:

> The TS pilot project is in the final step prior to certification of the analyzer. Although several adjustments and redesign of sampling equipment were required; [sic] preliminary results have demonstrated the feasibility of measuring total sulfur emissions from vent gases directed to flares. Based on these results, two refineries have already placed purchase orders for their TS analyzers.

In the May 15, 2007, ''Implementation Status Report for 2006 for Rule 1118—Control of Emissions From Refinery Flares,'' attached to Agenda No. 27, the SCAQMD concludes:

> Although they are behind schedule to comply with the July 1, 2007 monitoring requirements, the pilot projects are moving ahead convincingly towards completion by the end of 2007. As the rule is forcing new technologies for flare emission reporting, analyzer vendors have responded to the challenge and several options are now available, such as calorimeters, gas chromatographs, mass spectrometers and Pulsed UV Fluorescence analyzers, for continuously measuring HHV [higher heating value] and TS. Therefore, staff expects full implementation of the continuous monitoring provisions of the rule once the pilot projects are complete. Since the refineries could not meet the monitoring requirements by July 1, 2007, the refineries petitioned and were granted variances in late April 2007 by the AQMD Hearing Board to install and operate their flare monitoring systems over the next two years.

See reference document RRRRR.

Based on the above information, the total sulfur pilot project did not

conclude that the analyzer being evaluated could not provide sufficient accuracy, that the system was not maintainable, or that there were other insurmountable problems.

(c) *Comment (ExxonMobil):* EPA and industry need more time to review the SCAQMD pilot project test results and conclusions as they become available over the next few months and to determine if the technology that was tested is technically viable and whether or not a more cost effective alternative technology may be available. MSCC recommends that the implementation of total sulfur monitoring on the flares be delayed at least until the full results from the long-term program in California are available, and the capability of the market to supply and support such systems in severe weather locations such as Montana is demonstrated. At that point EPA should revise and then issue the final rule, after full stakeholder involvement in the process and full consideration of realistically available options.

Response: See responses to comments II.C.2.(a) and (b), above. Also, as noted in response to comment II.C.3.(a), below, EPA is revising the proposed FIP to allow other methods to determine total sulfur concentration in the gas stream to the flare. See response to comment II.F.1.(a) regarding the request for a stakeholder process.

(d) *Comment (ExxonMobil):* Recognizing that these total sulfur analyzer systems do not, by themselves, provide any air quality benefit, and considering that there are alternatives to continuous analyzers (e.g., individual grab samples, etc.), ExxonMobil submits that the proposed requirement to install continuous analyzers requires further evaluation in the stakeholder process.

Response: As discussed under response to comment II.C.1.(a), below, our final FIP allows other methods to determine total sulfur concentration in the gas stream going to the flare, including grab or integrated sampling methods. This should address the commenter's concerns. However, we note that whether or not total sulfur analyzer systems provide any air quality benefit by themselves is immaterial; the FIP establishes emission limits to assure that the SO_2 NAAQS are attained and maintained and it is essential that the FIP include reliable mechanisms to determine compliance with the limits. See, e.g., CAA section 110(a)(2)(F), 42 U.S.C. 7410(a)(2)(F). Finally, as we noted in our May 14, 2007, proposal to revise subpart J of the new source performance standards (NSPS), and to adopt new subpart Ja, the requirement to monitor flare emissions in the SCAQMD in fact resulted in reduced flaring (72 FR 27178, at 27195) (see reference document SSSSS).

(e) *Comment (ExxonMobil, WSPA):* Cost of installing total sulfur analyzers should be further evaluated given that the analyzers themselves do not provide an air quality benefit. Costs of total sulfur analyzer pilot project in the South Coast area expected to be in the range of 3 to 5 million dollars.

Response: See response to comment II.C.2.(d), above. Additionally, the cost of the South Coast pilot project was higher than expected because it was a pilot study and because some difficulties were encountered during the study. (See also note to Billings/Laurel SO_2 FIP File regarding conversations with SCAQMD, reference document TTTTT.)

Also, in its ''Implementation Status Report for 2006 for Rule 1118—Control of Emissions From Refinery Flares,'' May 15, 2007, the SCAQMD reported that refineries involved in the pilot projects reported that monitoring costs were estimated to be about 2 to 4.7 million dollars per flare. After looking at the breakdown of the costs, SCAQMD staff concluded that the total sulfur and higher heating value analyzer costs were comparable to staff's original estimates. However, the costs to design and build the monitoring system were significantly different. Research and development (R&D), engineering, labor/oversight, piping/electrical, analyzer shelters, and contingencies stated by the refineries represented approximately 75 to 85 percent of the flare monitoring system cost. (See reference document RRRRR.)

SCAQMD also indicated that in a related development, ExxonMobil informed staff in January 2007 that ExxonMobil was taking a different approach and was going to use a different technology, namely, gas chromatography (GC) for both the TS and the HHV analyzer; the estimated cost given to SCAQMD staff was 1 to 2 million dollars. ExxonMobil advised SCAQMD staff that similar instruments had been used at ExxonMobil's flares in Baytown, TX, and Chalmette, LA, for monitoring H_2S and the BTU content of vent gases for compliance with EPA and Texas Commission on Environmental Quality (TCEQ) regulations. (*Id.*)

(f) *Comment (CHS Inc.):* Analysis of total sulfur in a flare system is challenging because of the wide range of sulfur concentrations possible as well as the number of individual sulfur compounds potentially present. It is the understanding of CHS that there is not one commercial total sulfur analyzer in service on a refinery flare.

Response: See response to comment II.C.2.(a), above.

(g) *Comment (MSCC):* Since H_2S is believed to be the principal (overwhelming) sulfur component of candidate flares, further consideration is warranted as to whether the ''total'' sulfur component is the appropriate methodology, given the clear lack of existing equipment for the full potential range of concentrations of flare gases, and the complexity involved in continuously converting a variable mixture into a single component such as SO_2 or H_2S. EPA should evaluate whether there is a real, necessary, and significant need to require total sulfur analysis instead of allowing a somewhat simpler H_2S analysis of flare gases.

Response: The commenter has not provided any technical analyses supporting the notion that H_2S is the overwhelming component of the total sulfur in the gas stream to its flares or other flares in the area. EPA reported in the May 14, 2007, proposed new source performance standards (NSPS) for Subpart Ja (72 FR 27178, at 27194) (see reference document SSSSS) that ''based on available data, we understand that a significant portion of the sulfur in fuel gas from coking units is in the form of methyl mercaptan and other reduced sulfur compounds. These compounds will also be converted to SO_2 in the fuel gas combustion unit, which means the SO_2 emissions will be higher than the amount predicted when H_2S is the only sulfur-containing compound in the fuel gas.'' See also the response to comment II.C.2.(a), above. Therefore, in the FIP we are still requiring that the gas stream to the flare be analyzed for total sulfur.

(h) *Comment (ConocoPhillips, MSCC):* In a typical CEMS installation, the analyzers are subjected to frequent testing with gases intended to represent a ''zero'' condition and a ''span'' condition which is specified as a significant percent of full scale of the analyzer. ''Total Sulfur'' analyzers, operating over a wide range of concentrations, present some special concerns for span gases. If the proposed FIP requires high concentration analyzers, it also needs to incorporate protocols to establish calibration standards for these analyzers. ConocoPhillips indicates that flare gas sulfur concentrations can be highly variable, which makes the comparison required by the Relative Accuracy Test Audit (RATA) difficult. The sulfur analyzer captures samples in a series of periodic discrete ''grab'' samples, to be averaged over the period of total sample time. Comparison sample techniques vary, but in general involve getting a continuous sample over a period of

time, with the concentration averaged over that time period. Depending on the variability of the concentration over this time period, the average of the discrete ''grab'' samples has the potential to be different than the average of the continuous RATA sample. When the concentrations are numerically low, this difference is compounded and skews the accuracy calculations. This poses a significant risk of failing the RATA specifications, thereby voiding the monitor data and imposing a compliance issue (even if the difference is a few parts per million). ConocoPhillips believes that this requirement is not technically valid for the operations for which it is being proposed.

Response: As indicated in response to II.C.2.(b), above, the BP Pilot Project is nearing completion and expected to be a success. Also, see note to Billings/Laurel SO_2 FIP File regarding conversations with SCAQMD (reference document TTTTT). With respect to the calibration of the analyzer, SCAQMD indicated that there are several issues that need to be addressed. Specifically, one needs to assure that (1) the correct calibration gas is in the bottle, (2) the sample lines do not absorb or desorb sulfur, (3) the probe is positioned appropriately, and (4) all flow testing or other sample collection is correlated temporally with the analyzer measurements to ensure representative comparisons.

(i) *Comment (ExxonMobil):* EPA recognized the impracticality of concentration monitoring for flares during the recent Consent Decree negotiations. CEMS were deemed unnecessary and impractical for flares, unless the flare was in continuous use.

Response: The basis for the FIP is different than the consent decrees. The FIP assures attainment of the SO_2 NAAQS, a health-based standard, and the consent decrees assure that the new source performance standards (NSPS), technology-based standards, are met. Because of these differences, we believe it is appropriate to take a different approach.

We disagree with the commenter's statement that ''EPA recognized the impracticality of concentration monitoring for flares during the recent Consent Decree negotiations. CEMS were deemed unnecessary and impractical for flares.'' The CDs required that compliance with 40 CFR 60.104(a) be determined by several options, one of which was to install and operate a CEMS per 40 CFR supbart J (e.g. see paragraph 77 of CHS Inc.'s CD, reference document JJJJJ):

77. All continuous or intermittent, routinely-generated refinery fuel gas streams that are routed to the flare header at Cenex shall be equipped with a CEMS as required by 40 CFR § 60.105(a)(4) or with a parametric monitoring system approved by EPA as an alternative monitoring plan (''AMP'') under 40 CFR § 60.13(i), at the combined juncture prior to the flare. Cenex shall comply with the reporting requirements of 40 CFR Part 60, Subpart J, for the Refinery Flare.

We also note that the proposed NSPS Subpart Ja includes a total sulfur standard and CEMS requirements for fuel gas combustion devices, which are defined to include flares. (See 72 FR 27178 (May 14, 2007), reference document SSSSS.)

(j) *Comment (MSCC):* MSCC is aware that it may be possible to use gas chromatography systems to attempt to meet the proposed FIP requirements. Due to time constraints, they were not able to investigate this subject thoroughly.

Response: As indicated in response to II.C.2.(e), ExxonMobil reported to the SCAQMD that it is using gas chromatography for its total sulfur and higher heating value analyzers. ExxonMobil has advised SCAQMD staff that similar instruments have been used on its flares in Baytown, TX, and Chalmette, LA, for monitoring H_2S and the BTU content of vent gases for compliance with EPA and Texas Commission on Environmental Quality (TCEQ) regulations. (See reference document RRRRR.) Also, see note to Billings/Laurel SO_2 FIP File regarding conversations with SCAQMD (reference document TTTTT).

(k) *Comment (several commenters):* A general concern is expressed that the technology is not there to meet performance specifications.

Response: See responses to above comments II.C.2.(a) and (b).

(l) *Comment (YVAS):* YVAS concurs that total sulphur concentrations and not just H_2S be monitored.

Response: We acknowledge receipt of the comment and the support for our proposal.

3. Miscellaneous Flare Monitoring Concerns

(a) *Comment (COPC, CHS Inc., MSCC):* The proposed FIP should allow for Alternative Monitoring Plans (AMPs) to determine compliance. ConocoPhillips argued that AMPs are technically sound data gathering plans that are developed based on site-specific factors. These AMPs allow a facility to comply based on equivalent but customized criteria. CHS Inc. claimed that uncertainty of the monitoring capabilities and the quality assurance/quality control requirements makes it reasonable for EPA to allow for AMPs similar to other EPA regulations. MSCC indicated that it calculates and reports the amount of SO_2 emitted during each flaring event based on the recent content, and estimated flow gas(es) flared, based on reasonable technical judgment and indirect metering calculations. MSCC asserted that EPA has failed to show any significant errors or omissions with these methods.

Response: EPA is revising the proposed FIP to allow other methods to determine total sulfur concentration in the gas stream going to the flare. The other methods allow sources to use grab or integrated sampling, followed by sample analysis, to determine total sulfur concentration of the gas stream going to the flare. These grab and integrated sampling methods are currently allowed in the BAAQMD rule (see reference document LL), and similar methods have been allowed by the SCAQMD. Two of the refinery companies (ConocoPhillips and ExxonMobil) in the Billings area also have refineries in the Bay Area and/or the South Coast Area and should be familiar with these manual methods.

Specifically, we are revising the rule to indicate that the total sulfur concentration of the gas stream going to the flare can be determined by: (1) A total sulfur concentration monitoring system as we proposed on July 12, 2006, and including the changes we have identified here; or (2) grab sampling or integrated sampling.

If a source chooses to use the grab or integrated sampling methods, the requirement to obtain a grab or integrated sample will be triggered if the velocity of the gas stream to the flare in any consecutive 15-minute period continuously exceeds 0.5 feet per second (fps) and shall continue until the flow rate of the gas stream to the flare in any consecutive 15-minute period is continuously 0.5 fps or less. Additionally, the rule indicates that a grab or integrated sample will not be required if any water seal monitoring device indicates that flow is not going to the flare. See discussion in response to comment II.C.1.(c). Under these conditions, if the water seal monitoring device indicates that there is no flow going to the flare, yet the continuous flow monitor indicates flow, the presumption will be that no flow is going to the flare.

For grab sampling, a sample shall be collected within 15 minutes after the triggering conditions occur (see above), and the sampling frequency, thereafter, shall be one sample every 3 hours. For integrated sampling, a sample shall be

collected within 15 minutes after the triggering conditions occur (see above), and the sampling frequency, thereafter, shall consist of a minimum of 1 aliquot for each 15-minute period until the sample container is full, or until the end of a 3-hour period is reached, whichever comes sooner. Within 30 minutes thereafter, a new sample container shall be placed in service. For grab and integrated sampling, sampling shall continue until sampling is no longer required (see above).

Samples obtained by either grab or integrated sampling shall be analyzed for total sulfur concentration using ASTM Method D4468–85 (Reapproved 2000) ''Standard Test Method for Total Sulfur in Gaseous Fuels by Hydrogenolysis and Rateometric Colorimetry'' (see reference document MMMMMM); ASTM Method D5504–01 (Reapproved 2006) ''Standard Test Method for Determination of Sulfur Compounds in Natural Gas and Gaseous Fuels by Gas Chromatography and Chemiluminescence'' (reference document NNNNNN); or 40 CFR part 60, Appendix A–5, Method 15A ''Determination of Total Reduced Sulfur Emissions From the Sulfur Recovery Plants in Petroleum Refineries.'' Total sulfur concentration shall be reported as H_2S or SO_2 in ppm. Proper QA/QC procedures shall be used to assure that the samples are obtained and analyzed appropriately.

We chose the trigger level for two reasons. First, the rule indicates that the minimum detectable velocity of the flow monitoring device(s) shall be 0.1 fps and the flow monitoring devices shall continuously measure the range of flows corresponding to 0.5 to 275 fps. Since 0.5 fps is the minimum flow measure required, it is a reasonable trigger level to ensure protectiveness. Second, flow monitoring software averages all the readings in a 15-minute timeframe and records/reports the average flow. Using the minimum recorded/reported timeframe is reasonable to ensure protectiveness.

With respect to using estimations, technical judgment, and indirect metering to calculate emissions from the flare, because this FIP is designed to protect the NAAQS, we are choosing to require real-time direct monitoring methods to determine emissions. We do not believe estimations, technical judgments, and indirect metering are adequate substitutes for real-time monitoring for purposes of the FIP.

(b) *Comment (ExxonMobil, WSPA, COPC, CHS Inc., MSCC):* The proposed requirement for a facility to install, commission, and calibrate flow monitoring systems and continuous sulfur analyzer systems within 180 days after receiving EPA approval of a monitoring plan is a requirement that would simply be impossible to meet.

Response: Based on the comments received, we have revised the FIP to allow 365 days, rather than 180 days, after EPA approval of the flare monitoring plan to install continuous flow monitors and to begin determining total sulfur concentrations on the gas stream to the flare. Based on conversations with an ultrasonic flow monitor manufacturer, BAAQMD, and SCAQMD (see reference documents MMMMM, OOOOO, and TTTTT, respectively), we believe this additional time is reasonable to install continuous flow monitors and total sulfur analyzers or to initiate grab or integrated sampling.

(c) *Comment (MSCC, ExxonMobil):* The FIP implies that pilot and purge gas must be monitored. Pilot and purge gas lines are separate from the main header vent gas lines. Monitoring these other relatively small gas flows to the flare is a waste of effort and resources. The pilot gas is usually a small natural gas stream of low flow and essentially zero sulfur content. The small purge gas line usually is natural gas, refinery fuel gas, or inert gas such as carbon dioxide or nitrogen, or mixtures of such gases with air or steam. In either case, the flow is not high and usually ExxonMobil does not expect high sulfur content. These two stream types (pilot gas, purge gas) cannot physically be mixed with the main vent gas stream for measurement of flow and sulfur content by one set of monitors, without defeating their essential purposes of safety. Given the nature of the pilot gas and purge gas streams, it is not reasonable to require flow and sulfur monitors which meet the proposed FIP specs on these streams. Regulations from other areas allow the flow and sulfur content of pilot and purge gas to be estimated/monitored by other devices or sampling means. It is recommended that the proposed FIP language be re-written to clearly exempt pilot gases and purge line gases from the proposed FIP monitoring requirements. Neither can reasonably be considered as a significant source of sulfur dioxide. ExxonMobil asserted that EPA's proposed FIP requirement for the Billings/Laurel area is neither reasonable nor legally supportable.

Response: In conversations with the SCAQMD, we learned that in some instances they had seen copious emissions due to flare pilot and purge gas (see reference document TTTTT). SCAQMD indicated, as do the commenters above, that in some cases refinery fuel gas is used as a purge gas. Refinery fuel gas can have high sulfur content. Because of the potential for SO_2 emissions from the burning of pilot and purge gas, we believe it is necessary to account for these emissions and include them when determining the total emissions from the flare.

We agree that the proposed FIP implied that the pilot and purge gas should be monitored by the analyzers on the flare line used to measure flow and concentration of the gas stream to the flare. We are revising the FIP to require flow and H_2S concentration monitoring of the pilot and purge gas as one possible method to determine sulfur dioxide emissions from the burning of such gas in the flare. However, the FIP allows sources to forego monitoring if certain requirements are met. First, if facilities certify that only natural gas or an inert gas is used for the pilot and/or purge gas, then the gas does not need to be monitored. Second, if facilities can measure other parameters so that volumetric flows, expressed in SCFH, of pilot and purge gas can be calculated (based on the design and the parameters), then the flows do not need to be monitored. Third, if the H_2S concentration of the pilot or purge gas can be determined through other methods, then the H_2S concentration does not need to be monitored. Once flow and H_2S concentration of the pilot and purge gas are determined, sources must then calculate the SO_2 emissions from the pilot and purge gas. The calculated SO_2 emissions will then be added to the other SO_2 emissions from the flare to determine compliance with the flare SO_2 emission limits. Also, we are revising the reporting requirements to require sources to: (1) Certify in the quarterly reports if pilot or purge gas is not monitored because only natural gas or an inert gas is used as the pilot and/or purge gas; or (2) report flow and H_2S concentration of the pilot and/or purge gas and the resultant SO_2 emissions.

(d) *Comment (MSCC):* Flow and concentration monitoring would be costly and there is no justification for such costs and complexity given that the area is in attainment for the NAAQS.

Response: See response to comments II.C.2.(d) and II.C.3.(c), above.

(e) *Comment (YVAS):* YVAS concurs that each source submit for EPA review a quality assurance and quality control plan for each of the continuous monitors.

Response: We acknowledge receipt of the comment and the support for our proposal.

D. Flare Limits

1. Concerns With Flare Emission Limit

(a) *Comment (CHS Inc, MSCC):* The proposed flaring limit of 150 lbs SO_2/3 hour period was used in the model to represent routine flaring and background SO_2 concentrations. This threshold was never intended to and did not account for malfunctions, startups, or shutdowns.

Response: The FIP fills the gap for the provisions of the SIP that were disapproved. In its attainment demonstration modeling, the State modeled emissions from flares at 150 lbs of SO_2/3-hour period, yet the SIP did not contain corresponding emission limits for the flares. This was the basis for our disapproval of part of the SIP. We believe we have appropriately addressed malfunction, startup, and shutdown in this final rule. See section II.D.3., below.

Certain assumptions were made in the State's attainment demonstration for the Billings/Laurel SO_2 SIP. Included in the assumptions was that flares had routine emissions of 150 lbs of SO_2/3-hour period. To assure attainment and maintenance of the NAAQS, the SIP or a FIP must contain enforceable emission limits on the flares. This is fully explained in our proposed action on the Billings/Laurel SO_2 SIP (64 FR 40791, 40801, July 28, 1999) and in the response to comments contained in our final action on the Billings/Laurel SO_2 SIP (67 FR 22168, 22179, May 2, 2002).

The State of Montana has flare provisions that apply to CHS Inc., ConocoPhillips, ExxonMobil, and MSCC. See CHS Inc.'s, ConocoPhillips', ExxonMobil's, and MSCC's exhibit A–1, adopted by the Montana Board of Environmental Review on June 12, 1998 (reference documents QQQQQQ, PPPPPP, UUUUU, and OOOOOO). Exhibit A–1 contains additional State requirements that were *not* submitted for inclusion in the SO_2 SIP. Among these is an emission limit on flares of 150 lbs of SO_2/3-hour period, the value the State relied on to model attainment. These flare provisions do not and would not satisfy the SIP/FIP requirements of the CAA for two reasons. First, they were never submitted to EPA to be included as part of the SIP. Second, the flare provisions contain automatic exemptions for malfunction, startup, and shutdown. This is inconsistent with EPA's longstanding interpretation of the CAA, which is that, since SIPs must provide for attainment and maintenance of the NAAQS and the achievement of the PSD increments, all periods of excess emission must be considered violations. Accordingly, any provision that allows for an automatic exemption for excess emission is prohibited.[8]

(b) *Comment (NEDA/CAP, MSCC, ExxonMobil):* The capriciousness of EPA's proposed FIP provision affecting flaring is that EPA recognizes in the proposed notice that sources likely will be unable to comply with the continuous flaring emission limitations. Yet the proposed FIP would allow citizens to bring actions for violations of unattainable limits when EPA or the State likely would choose to exercise its prosecutorial discretion. Such a regulatory ''Catch-22'' is both unreasonable and unlawful.

Response: We respectfully disagree with the commenter. First, in our proposal we did not say that sources will be unable to comply with the continuous flaring emission limitations. We note that, after receiving the refineries' estimates of routine flare emissions, the State established as a State-only limit the same numerical flare limit we are adopting, and the refineries and MSCC agreed to the stipulations containing those limits. See 67 FR 22180, col. 2, May 2, 2002, and reference documents UUUUU, OOOOOO, PPPPPP, QQQQQQ, and SSSSSS. Also, at the time of our SIP action, Conoco indicated to us that routine emissions from its flare were expected to be less than 150 lbs SO_2/3-hour period. See 67 FR 22180, col. 2, May 2, 2002, and reference document RRRRRR. Based on this information, we have concluded that the refineries and MSCC will be able to comply with the 150 lbs SO_2/3-hour flare limit under normal operating conditions.

We did say in our proposal that we recognize flares are sometimes used as emergency devices and that it may be difficult to comply with the flare limits during malfunctions. *See* 71 FR 39264, col. 1, July 12, 2006. However, contrary to the commenters' assertions, our decision to require an emission limit that may be difficult to meet under certain conditions is not capricious, unreasonable, or unlawful.

There is often a conflict, which is not limited to refinery flare emissions, between a source's ability to control emissions during certain operating conditions and the CAA's requirement to attain and protect the NAAQS. Our fundamental responsibility under the CAA with respect to SIPs/FIPs, however, is to ensure the NAAQS are attained and other CAA requirements are met. See CAA sections 110(a) and (l), 42 U.S.C. 7410(a) and (l); reference document RRR, September 20, 1999, memorandum titled ''State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown,'' from Steven A. Herman and Robert Perciasepe, to Regional Administrators (hereafter ''1999 excess emissions memorandum''); *City of Santa Rosa* v. *EPA,* 534 F.2d 150, 155 (9th Cir. 1976), vacated on other grounds, 429 U.S. 990 (1976). Thus, we have long held that outright or ''automatic'' exemptions from emission limits needed to demonstrate attainment of the NAAQS are not appropriate, something we indicated in our proposed FIP. See our 1999 excess emissions memorandum, reference document RRR, and our proposed FIP, 71 FR 39264, col. 1, July 12, 2006. Our interpretation on this issue has been upheld by the U.S. Court of Appeals for the 6th Circuit: in a 2000 decision, the Court rejected a challenge to EPA's disapproval of a Michigan SIP revision that provided an automatic exemption from SIP limits during malfunction, startup, and shutdown periods. *Michigan Department of Environmental Quality* v. *EPA,* 230 F.3d 181 (6th Cir. 2000).

As we explained as long ago as 1977, the appropriate approach in SIPs/FIPs is to require continuous compliance in order to create an incentive for sources to properly operate and maintain their facilities and to improve their operation and maintenance practices over time. *See, e.g.*, 42 FR 21472, April 27, 1977 (reference document VVVVV), and 42 FR 58171, November 8, 1977 (reference document WWWWW). We explained that an automatic exemption would encourage the source to claim after every period of excess emissions that the exemption applied, and that instead the proper means to provide relief to sources was through the exercise of enforcement discretion in appropriate circumstances. *Id.*

Later, in 1999, we indicated that states could include in their SIPs, as an alternative to the enforcement discretion approach, narrowly tailored affirmative defense provisions to address source difficulties meeting emission limits during malfunction, startup, and shutdown periods. See reference document RRR, our 1999 excess emissions memorandum. In this 1999 memorandum we reiterated our long-held view that, ''because excess emissions might aggravate air quality so as to prevent attainment or interfere with maintenance of the ambient air quality standards, EPA views all excess emissions as violations of applicable emission limitation[s].'' We also

[8] *See* reference document RRR, September 20, 1999, memorandum entitled ''State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown.''

repeated our recognition that some malfunctions may be unavoidable.

Thus, while flares may have unique characteristics, the underlying conflict between the ability to comply and need to meet the NAAQS is the same. We do not believe the nature of the emission point should dictate a different approach to protection of the NAAQS. Whether considering stack emissions at a power plant or other source, or flare emissions at a refinery, the SIP/FIP should be structured to provide the source with the incentive to properly design, operate, and maintain its facility. An outright exemption from the emission limits would not do this.

To provide relief to the sources for truly unavoidable violations, while still maintaining appropriate incentives for compliance, we are providing an affirmative defense to penalties for violations of flare limits during malfunctions, startups, and shutdowns. The elements of the defense, which a source would have to prove in court or before an administrative judge, are enumerated in our final rule and are consistent with the elements described in our 1999 excess emissions memorandum. The gist of these elements is that a source must take all possible steps to prevent exceedances of the limits and to minimize the amount, duration, and impact of those exceedances. These same or similar criteria have been adopted by other regulatory agencies, including the State of Colorado and Maricopa County, Arizona, in excess emissions rules. See, e.g., Colorado Air Quality Control Commission Common Provisions Regulation, 5 CCR 1001–2, Sections II.E. and J. (reference document TTTTTT); Maricopa County Air Pollution Control Rules, Rule 140, ''Excess Emissions'', Section 400 (reference document ZZZZZ).

Finally, we reject commenters' assertion that citizens will necessarily pursue enforcement where the State and EPA do not, but in any event, this possibility is inherent in the structure of the CAA; Congress provided citizens with the ability to enforce SIPs and FIPs. This inherent structure is not a reason for us in this rulemaking action to change our longstanding interpretations regarding the proper treatment of excess emissions.

(c) *Comment (NEDA/CAP):* Industry contends that it is virtually impossible to meet the proposed limits during flaring, since flares themselves are not process units when they are treating excess gases during malfunction events. EPA has presented no information in this notice or elsewhere to the contrary. On this basis alone, if the mass emission limits for flares are not made less stringent, the FIP must recognize in its final action that flares must be available for use during malfunctions and emergencies to protect the safety of employees and the public, as well as equipment integrity, regardless of the mass emission rate of the time.

Response: The FIP is not intended to jeopardize the safety of refineries, their workers, or neighbors. Our SIP policy [9] has long recognized that imposing penalties for violations of emission limitations for sudden and unavoidable malfunctions caused by circumstances entirely beyond the control of the owner or operator may not be appropriate. States, EPA, and citizens have the ability to exercise enforcement discretion to refrain from taking enforcement action in these circumstances. In addition, EPA has revised the FIP to provide sources with the ability to assert an affirmative defense to penalties for violations of flare limits during malfunction, startup, and shutdown. However, while we recognize some violations may be unavoidable, we also believe that sources have a responsibility to do their best to achieve continuous compliance and to minimize the number, duration, and severity of malfunctions and other events leading to *excess emissions*.

(d) *Comment (MSCC):* Various jurisdictions have attempted to address flare emissions. There is no uniform federal requirement or regulation requiring such limits or monitoring, particularly for short term limits, or for malfunction, startup, and shutdown controls. It is difficult to understand any reason that the Montana SIP for Billings/Laurel is ''substantially inadequate'' regarding flaring or for proposing restrictions going far beyond those in effect in any jurisdiction or federal rule.

Response: Regardless of what other areas are doing with respect to flare emissions, we must fulfill our responsibility to fill the gaps of the provisions of the SIP that we disapproved. Each area must be addressed on a case-by-case basis. The response to comment II.D.1.(a) and our notice of proposed rulemaking express why we believe the FIP should contain emission limits for flares in the Billings/Laurel area. Regarding the comment about substantial inadequacy, please see our response to comment II.B.2.(a), above.

[9] *See* reference document RRR, September 20, 1999, memorandum entitled ''State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown.''

(e) *Comment (MSCC):* There is no reasonable basis to believe that flaring, as practiced in this air-shed, prevents attainment and maintenance of NAAQS, or that it is inadequately regulated, or that it has an impact on health, welfare, or commerce among states, as years of experience confirm. The State of Montana flare provisions are adequate. No federal action is needed.

Response: This comment goes to the validity of our SIP action and is not relevant here. See our response to comment II.B.2.(a), above.

(f) *Comment (MDEQ):* Imposing a mass-based emission limit (and the necessary and ancillary requirements for measuring flows and concentration) on a flare increases the regulatory workload while providing a marginal benefit. Currently, Montana's Malfunction rule (ARM 17.8.110) provides Montana with enforcement discretion during malfunction events.

Response: We note that the State has mass-based emission limits on the flares in the Billings/Laurel SO_2 area. See CHS Inc.'s, ConocoPhillips', ExxonMobil's, and MSCC's exhibit A–1, adopted by the Montana Board of Environmental Review on June 12, 1998 (reference documents QQQQQQ, PPPPPP, UUUUU, and OOOOOO). Exhibit A–1 contains State requirements that were *not* submitted for inclusion in the SO_2 SIP. The provisions of exhibit A–1 also appear in the sources' Title V permits and are labeled as State-only provisions. See, for example, ConocoPhillips' Title V permit (see reference document XXXXX).

The exhibit A–1 requirements indicate that the facilities shall not allow SO_2 emissions from any flare, unless the emissions are a minor flaring event (defined as less than or equal to 150 pounds per 3-hour period), or the result of start-up, shutdown, or a malfunction. Exhibit A–1 does not indicate how compliance with the emission limit is determined and only requires reporting of flare emissions that are not minor flaring events.

Presumably, the additional workload provided by the FIP, that the State is referring to, is in evaluating the continuous analyzers and receiving quarterly reports. We believe the additional workload is warranted and necessary to determine compliance with the flare emission limits and assure that the SO_2 NAAQS will be attained and maintained. See, e.g., CAA sections 110(a)(2)(A), (C), and (F), 42 U.S.C. 7410(a)(2)(A), (C), and (F).

We do not understand the intent of the comment that indicates MDEQ has enforcement discretion under its malfunction rule in ARM 17.8.110

(reference document YYYYY). Before MDEQ could decide whether or not to pursue an enforcement action for violations of the State-only flare limit, MDEQ would need to evaluate information submitted by sources.

Additionally, we note that in response to our proposed action on the Billings/Laurel SIP, the State said the following: ''The State agrees with EPA that the SIP is incomplete without enforceable emission limitations applicable to flares, and that such limitations should correspond to the emission rates used in the attainment demonstrations. However, after significant effort to address the issue, the State was unable to find a workable solution that would meet EPA's concerns.'' See document #IV.A–23, comment #3, from docket #R8–99–01; 67 FR 22183, col. 1, May 2, 2002; and reference document ZZZZZZ.

(g) *Comment (YVAS):* YVAS concurs with EPA's further assumption (page 39264), that ''the 3-hour SO_2 NAAQS would be attained'' if ''the limit for the main flares was established at 500 pounds of SO_2 per calendar day.'' Since there is apparently precedent (as noted on page 39263 FR) ''contained in settlements between the United States and CHS Inc, ConocoPhillips and ExxonMobil,'' YVAS further agrees to and accepts EPA's reasoning that ''the 500 pound value for this FIP (should) be imposed as an enforceable limit and not just a trigger point for further analysis'' as a starting point. However, the ''500 lbs per day limit,'' if extended for any length of time, is not acceptable. Based on acquired information, YVAS does not think this limit would be punitive, nor would it be impossible for industry sources to attain. It is accepted that zero emissions may not be possible or attainable, but any lower emissions rate would be a public benefit. And, although a compliance drop could create greater industry noncompliance and require more enforcement action, YVAS does not believe the more stringent standards would create more noncompliance problems for the sources.

Response: We have decided to retain the proposed limit of 150 lbs of SO_2/3-hour period. A more stringent limit than either proposed is unnecessary to ensure attainment of the NAAQS. Thus, we believe it is reasonable not to impose a more stringent limit as the commenter suggests.

(h) *Comment (Citizen):* The proposed rule should not be adopted unless recognized medical opinion concerning the cumulative health risks of the release of 500 lbs per day of sulphur dioxide into the area's airshed is analyzed. Specifically, what justification criteria are being used to establish the 500 lb. minimum per day base in the Proposed Rule. And, as noted on page 39264 of the **Federal Register** dated July 12 announcing the FIP, EPA says ''if we adopted the 500 pound value in this FIP, we would impose it as an enforceable emission limit.'' If there are still questions concerning the 500 lb per day emission limit, why is it being proposed? Is there a lower and perhaps ''better'' emission limit per day that should be considered?

Response: The current SO_2 NAAQS were set to protect public health and welfare after consideration of various scientific data. It is not our role here to re-evaluate the NAAQS, but to ensure they are met. Through modeling we determined that both limits would protect the SO_2 NAAQS. While a lower limit might be attractive, we are setting the limits at 150 lbs of SO_2/3-hour period, a level sufficient to meet the SO_2 NAAQS; we think this is reasonable. See response to comment II.A.2.(b). See also our response to comments pertaining to SO_2 NAAQS and SO_2 Health Effects (II.F.9. and 10., respectively) below.

(i) *Comment (MDEQ):* MDEQ believes that hard cap emission limits on flares are good but believes that the flare emission limits will be more accepted if malfunction, startup, and shutdown exemptions are introduced.

Response: We acknowledge MDEQ's support for hard cap emission limits on flares. Regarding exemptions for malfunction, startup, and shutdown, see our responses to comments II.D.1.(b) and (c), above.

As indicated above, to address industry concerns regarding malfunctions, startup, and shutdown, we are revising the FIP to provide sources the ability to assert an affirmative defense to penalties for violations of flare limits during malfunction, startup, and shutdown.

2. Safety Device

(a) *Comment (CHS Inc., WETA, MPA, NPRA):* From a safety standpoint, there are concerns with flare limits applying at all times, including malfunction, startup, and shutdown. Flares are primarily safety devices, designed as a means to ensure the safety of employees and the community and to maintain the integrity of refinery equipment during situations that are not representative of normal operations. It will be precedent setting if the EPA views these infrequent events as enforcement situations. It would, in essence, require facilities to choose between maintaining a safe, controlled refinery and violating the FIP.

Response: See responses to comments II.D.1.(b) and (c), above. As we indicate in our response to comment II.D.1.(c), the FIP is not intended to jeopardize the safety of refineries, their workers, or the community. However, we believe it would be inconsistent with CAA sections 110(a) and (l) to provide an outright exemption from the flare limits during malfunction, startup, and shutdown periods. Instead, to provide some measure of relief to the sources, we have included an affirmative defense to penalties in our final FIP rule. If a source takes steps consistent with the elements of the affirmative defense, excess flaring emissions during malfunction, startup, and shutdown periods would not be penalized. We have considered several additional factors: First, historically, the sources have used the flares as part of their routine operations, i.e., in non-emergency conditions. See September 28, 1995, letter from Bob Raisch to Douglas Skie (reference document SSSSSS); 67 FR 22180, col. 2, May 2, 2002. Also, in its comments on the FIP (reference document QQQQ), CHS Inc. indicated that the 150 lbs/3-hour value was used in the original model to represent routine flaring and background SO_2 concentrations. MSCC indicated in its comments on the FIP (reference document WWWW) that flares can be used for handling streams other than those arising from malfunction, startup, and shutdown. Second, flaring events have not necessarily been as infrequent as the commenter implies. From the first quarter of 2005 through the second quarter of 2007, source reports indicate that MSCC and the 3 refineries experienced over 150 flaring events with SO_2 emissions greater than 150 pounds over 3 hours. See reference document HHHHHH. Third, the emissions during these events can be very high—the State estimated that emissions during malfunctions could be as high as 6,000 pounds/3-hour period, and the sources' own reports for first quarter 2005 through second quarter 2007 reflect emissions as high as 12,400 pounds over a 2-hour period. See reference documents SSSSSS and HHHHHH. The maximum value reported for a flaring event during the period was 40,800 pounds of SO_2 over an unknown duration, and there were numerous events in the thousands of pounds. See reference document HHHHHH. Fourth, we want to ensure that the owners/operators design, operate, and maintain their facilities to minimize flare emissions by minimizing the conditions that lead to malfunctions,

startups, and shutdowns. In the FIP context, the appropriate way to do this is by establishing a flare emission limit that is not subject to outright exemptions. Fifth, the State and EPA have already viewed these events as enforcement situations in the context of the refinery initiative and, through the consent decrees, have created the expectation that the refineries will minimize flare emissions. We explain in this preamble why the conditions of the consent decrees, while beneficial, are not sufficient for purposes of the FIP. See, e.g., responses to comments II.A.2.(b), II.D.4., and II.E.1.(e). We also note that MSCC is not subject to a consent decree. Finally, the air does not care whether emissions come out of a flare that is used as a safety device at a refinery or a stack at a power plant or other facility.[10] In both cases, the emissions of SO_2 impact air quality, and EPA's charge is to address those impacts so as to protect the NAAQS.

(b) *Comment (WSPA, MSCC, ExxonMobil):* EPA proposes that flare limits apply at all times without exception. It would be virtually impossible to comply with SOx mass emission limits at all times and for all malfunctions for the simple reason that the primary function of a refinery flare is to serve as a safety device. Flares must be available for use during malfunctions and emergencies to protect equipment and the safety of employees and the public.

Response: See responses to comments II.D.1.(b) and (c), and II.D.2.(a), above.

(c) *Comment (NPRA):* The U.S. Chemical Safety Board (CSB) urges the installation of flares. The CSB sites flares as a ''safer alternative'' when compared to other techniques. Clearly the CSB recommendation is at odds with Agency's proposal.

Response: See responses to comments II.D.1.(b) and (c), and II.D.2.(a), above. Also, we do not believe our action is at odds with the CSB's recommendations. In this action, we are not opining on the use of flares versus other techniques. We are not telling the refineries or MSCC to stop using their flares. However, flares are an emission point at the refineries and MSCC, they have been the source of routine emissions historically, and they can be the source of very large quantities of emissions in a short period of time. We believe it is necessary and appropriate to impose limits on the flare emissions to fill one of the gaps in the SIP, to support our attainment demonstration, and to create appropriate incentives for the sources in the design, operation, and maintenance of their facilities.

3. Malfunction, Startup, and Shutdown

(a) *Comment (WSPA, MSCC, ExxonMobil):* In working with the South Coast Air Quality Management District, they were careful not to compromise safety by restricting, either explicitly or implicitly, the use of flares during emergencies through the imposition of mass emission limits or otherwise.

Response: See responses to comments II.D.1.(b) and (c), and II.D.2.(a), above. Our FIP does not require or direct the sources to not use their flares during emergencies. Unlike the South Coast or Bay Area,[11] however, we are required to promulgate a FIP that demonstrates attainment of the SO_2 NAAQS. Consequently, it is necessary and appropriate that we impose emission limits on the flares that are consistent with our modeled attainment demonstration. To address industry concerns, we are providing an affirmative defense to penalties for excess flare emissions during malfunction, startup, and shutdown periods.

We note that SCAQMD's rule 1118(d) imposes annual SO_2 performance targets for flare emissions (caps on the amount of SO_2 emitted from flares in one year). The performance targets are based on the crude processing capacity and become more stringent over time. Malfunction, startup, and shutdown emissions count towards the annual performance targets unless they meet certain narrowly defined exemptions in rule 1118(k). Sources that exceed their annual performance targets must submit a flare minimization plan and are subject to mitigation fees of up to four million dollars a year (see reference document CCC).

(b) *Comment (WSPA, MSCC, ExxonMobil):* It is essential for EPA to recognize the true nature of malfunctions at refineries, and the fact that there is no practical way to regulate the release of vent gases during malfunctions, or, to treat the emergency vent gases to remove sulfur compounds prior to combustion in the flare.

Response: See responses to comments II.D.1.(b) and (c), II.D.2.(a), and II.D.3.(a), above. Also, we understand that while a malfunction is underway, it may be impossible to treat the gases prior to combustion in the flare. However, we do not agree that all malfunctions are categorically unavoidable. We are concerned with the causes leading to the malfunctions and the steps taken after the malfunction begins to mitigate its effects. We are promulgating an affirmative defense provision along with the flare emission limits that should ensure sources take all steps within their control to avoid malfunctions and minimize their impacts on air quality once they occur. We believe this is reasonable and appropriate to ensure protection of the NAAQS.

(c) *Comment (WETA):* Pursuing the adoption of this FIP could potentially result in the setting of an inconsistent national policy for malfunction, startup, and shutdown.

Response: We do not agree with the comment. The FIP would not be setting inconsistent national policy for malfunction, startup, and shutdown occurrences. To the contrary, we are following our national policy with respect to malfunctions, startup, and shutdown as expressed in the 1999 excess emissions memorandum (see reference document RRR).

(d) *Comment (MSCC):* MSCC believes that the approach taken by the State of Montana in providing for minimization of flaring, above a reasonably determined de minimis threshold, and clear exceptions for malfunctions, startup, shutdowns and other operational needs is the sound approach, to address the reality that there are, and will be situations such as malfunctions, startups, and shutdowns and emergencies that are beyond the reasonable control of a source, in the operation of flares.

Response: We recognize there may be violations of flare emission limits during malfunctions, startups, shutdowns, and emergencies that are beyond the control of a source; accordingly, we are providing sources with the ability to assert an affirmative defense to penalties for violations of flare limits that occur during malfunction, startup, and shutdown periods. We believe this is a reasonable approach, consistent with our views that automatic exemptions are not appropriate for emission limits relied on

[10] In theory, a smokestack could also be characterized as a safety device; among other things, a stack is used to prevent harmful ground level concentrations of pollutants. In addition, gases are sometimes bypassed around control devices directly to the stack to avoid damage to control devices and/or other dangerous conditions. In the SIP/FIP context, we do not believe it is appropriate to automatically exempt these stack emissions, even though the stack may serve a safety purpose. See our 1999 excess emissions memorandum, reference document RRR.

[11] The Bay Area prohibits all refinery flaring unless the flaring is consistent with a flare minimization plan or is caused by an emergency. See BAAQMD rule 12–12–301 (reference document AAAAAAA). The South Coast rule requires minimization of flaring and prohibits combustion of vent gas in the flare except during emergencies, shutdowns, startups, turnarounds or essential operational needs. See SCAQMD rule 1118(c)(4) (reference document CCC).

to demonstrate attainment of the NAAQS.

(e) *Comment (COPC):* The rule as written will ultimately put ConocoPhillips in the position of having to choose between compliance with an environmental regulation and maintaining safe operating conditions. This is an untenable position which can be avoided by acknowledging in rule language that flare SO_2 emissions can occur during periods of malfunction, startup, and shutdown, provided that accepted management systems are followed.

Response: See responses to comments II.D.1.(b) and (c), and II.D.2.(a), above. We believe the provision of the affirmative defense to penalties for excess emissions during malfunction, startup, and shutdown periods appropriately and reasonably addresses the commenter's concerns.

(f) *Comment (COPC):* A FIP program that adopts the same evaluation procedures for malfunctions, startups, and shutdowns for flares is preferred to a fiction that a facility can maintain a flare emission limit in all malfunction, startup, or shutdown events regardless of size or magnitude.

Response: See response to comments II.D.3.(a), (b), (c), (d), and (e), above.

(g) *Comment (YVAS):* Specific to flaring emergencies by the sources, any added controls on flaring to protect the public (from SO_2 exceedences) is essential and is common sense.

Response: We acknowledge the comment and support for our proposal.

4. Subject to NSPS

Comment (CHS Inc.) It should be noted that the CHS refinery flare is subject to NSPS Subpart J as a result of the consent decree. This limits the H_2S content of the routine refinery fuel gas streams routed to the flare and requires monitoring to demonstrate compliance with the limit.

Response: As indicated by the commenter, the consent decree limits the H_2S content of the routine refinery fuel gas streams routed to the flare. However, there are several reasons why the H_2S ppm limit alone is not sufficient to support the FIP's attainment demonstration.

First, flow information is needed to translate H_2S ppm values into pounds of SO_2 for a given period of time. Flow rates to the flares can vary widely. Without knowing potential worst-case flows to the flare, we cannot determine whether the consent decree H_2S ppm limit would assure compliance with the FIP 150 pounds of SO_2/3-hour limit at the 3 refineries. Therefore, we cannot conclude that the consent decree H_2S limit, even absent the additional concerns we discuss below, would assure attainment of the SO_2 NAAQS.

Second, during certain situations, as indicated in 40 CFR 60.8(c) and 60.104(a)(1), the H_2S limit does not apply. Specifically, the consent decree indicates that the CHS Inc. refinery flare is an affected facility under 40 CFR part 60, subparts A and J for fuel gas combustion devices and that fuel gases combusted in the refinery flare shall comply with the emission limit of 40 CFR 60.104(a)(1). However, 40 CFR 60.104(a)(1) exempts process upset gases and certain types of fuel gas from the emission limit. Additionally, the provisions in 40 CFR 60.8(c) indicate that emissions in excess of the level of the applicable emission limit during periods of malfunction, startup, and shutdown shall not be considered a violation of the applicable emission limit unless otherwise specified in the applicable standard. Emission limits for demonstrating attainment and maintenance of the NAAQS must apply at all times. (See responses to comments II.D.1.(b) and II.D.2.(a), above, and reference document RRR.)

Third, the alternative monitoring plan (AMP), that was approved pursuant to the consent decree and NSPS requirements (see reference document LLLLLL) for the refinery flare fuel gas combustion device, primarily relies on quarterly measurement of the H_2S content of some of the refinery fuel gas streams that go to the flare using stain tubes; more frequent measurement may be required for a limited time depending on the concentration measured. Although this may be acceptable under the terms of the consent decree and the NSPS, we believe more frequent testing is necessary for determining compliance with an emission limit set to assure attainment and maintenance of the NAAQS.

5. Affirmative Defense/1999 Excess Emissions Memorandum

(a) *Comment (WSPA):* The availability of an affirmative defense is desirable. Even though EPA may allow for the assertion of affirmative defenses, the affirmative defense would only be allowed for the mitigation of penalties. This is an unreasonable position in which to place refiners subject to the proposed requirements.

Response: We are providing an affirmative defense to penalties in the final rule, but not to injunctive relief. This is consistent with the Clean Air Act interpretations expressed in our 1999 excess emissions memorandum. See reference document RRR. We believe it is reasonable to retain the authority to seek injunctive relief for all exceedances of emission limits so that we remain able to protect the NAAQS, regardless of source ''culpability'' for any specific exceedance.

We note that in our proposed FIP preamble, we invited comment regarding whether it would be appropriate to extend an affirmative defense to the FIP sources for exceedances of their flare limits during malfunctions, startup, and shutdown. See 71 FR 39264, July 12, 2006. There we said the following:

> ''We do interpret the CAA to allow owners and operators of sources to assert an affirmative defense to penalties in appropriate circumstances, but normally we would not view such an affirmative defense as appropriate in areas where a single source or small group of sources has the potential to cause an exceedance of the NAAQS. See 1999 policy statement. We solicit comment on whether it would be appropriate to include in our final FIP the ability to assert an affirmative defense to penalties only (not injunctive relief) for violations of the flare limits.''

We have decided to provide an affirmative defense for violations of the flare limits during malfunction, startup, and shutdown. We believe this represents a deviation from our 1999 excess emissions memorandum because in the Billings/Laurel area, one or more of the FIP sources may have the potential to cause an exceedance of the SO_2 NAAQS. In the unique circumstances of this FIP, with the rule language we are adopting, we believe a deviation from the 1999 excess emissions memorandum is warranted. For example, we have included rule language that indicates the affirmative defense is not available if, during the period of the excess emissions, there was an exceedance of the SO_2 NAAQS that could be attributed to the emitting source. At least one other EPA Region has approved an affirmative defense provision with this language. See Maricopa County Rule 140 (reference document ZZZZZ), which Region 9 approved on August 27, 2002 (67 FR 54957) (reference document AAAAAA). Although not identical to the 1999 excess emissions memorandum, this rule language should provide a significant incentive to the facilities to take steps to avoid and reduce flaring whenever possible.

Also, based on our experience since the 1999 excess emissions memorandum was issued, we believe that the elements of the affirmative defense delineated in the 1999 excess emissions memorandum, which elements we have adopted in this FIP, provide a very significant incentive for

facilities to do all they can to comply with their emission limits. It is not clear that the incentive is significantly different than would be present under a traditional enforcement discretion approach, particularly when sources assume that enforcement action will rarely be taken for infrequent or small violations. Finally, we have considered industry comments regarding safety concerns, and while we do not agree that emissions from flares should be treated entirely differently from emissions from stacks and other points, we think our resolution of this issue appropriately and reasonably addresses industry concerns.

(b) *Comment (WETA):* Any flare emission limitations should include, at the least, an allowance for an affirmative defense for malfunction, startup, and shutdown circumstances.

Response: See response to comment II.D.5.(a), above.

(c) *Comment (NEDA/CAP):* EPA should adopt a broad affirmative defense for penalties and injunctive relief for malfunctions as part of the mass emission limit for flares. MPA indicated that the FIP should not be adopted in the proposed form because the failure to include an affirmative defense for flaring resulting from malfunctions poses a significant safety risk to employees and the public with no corresponding benefit.

Response: See response to comment II.D.5.(a), above.

(d) *Comment (NEDA/CAP):* NEDA/CAP is concerned about the potential for EPA's establishment of any precedent with regard to limiting the availability of affirmative malfunction defenses in nonattainment areas generally. NEDA/CAP is also concerned with the application of the 1999 Malfunction Policy in the Billings/Laurel proposed FIP because the Policy has never been subject to notice and comment rulemaking, but the application of the policy results in clear legal consequences for regulated entities in contravention of *Appalachian Power* v. *EPA*, 208 F.3d 1015 (D.C. Cir. 2000).

Response: See response to comment II.D.5.(a), above. Also, we respectfully disagree with the commenter that we are contravening the *Appalachian Power* case holding. In our proposal, we proposed that the flare limits would apply at all times but took comment on the application of an affirmative defense to penalties for those limits. In this final rulemaking, we have decided to provide the affirmative defense to penalties. The commenter had a full opportunity to comment on our proposal, which included a discussion of our interpretations of the CAA with respect to the treatment of excess emissions during malfunction, startup, and shutdown. See 71 FR 39264, col. 1, July 12, 2006. We have considered the commenter's comments along with all other comments.

(e) *Comment (NEDA/CAP):* NEDA/CAP is also concerned that EPA has made no demonstration that ''a single source or small group of sources has the potential to cause an exceedence of the NAAQS,'' or that the NAAQS in this air basin is in fact, any more vulnerable to a NAAQS exceedence from these sources than any other nonattainment areas is from a small group of sources. If finalized, the failure to provide an affirmative defense for malfunctions would be entirely arbitrary and unreasonable. Moreover, as a national precedent with severe legal consequences for sources in other nonattainment areas, adoption of this proposed FIP provision would be highly vulnerable to legal challenge for failure to meet the Clean Air Act's notice and comment procedures under a federal court's recent decision in *Environmental Integrity Project* v. *EPA*, 425 F.3d 992 (D.C. Cir. 2005).

Response: In our final action, we are providing an affirmative defense to penalties for the flare limits. We disagree with the commenter's assertion regarding notice and comment procedures; we believe we have met all applicable requirements and provided fair notice regarding our intentions in our notice of proposed rulemaking. We proposed that the flare limits would apply at all times and also invited comment on whether it would be appropriate to extend an affirmative defense for the flare limits to the four sources subject to the FIP. Our final action is a logical outgrowth of our proposal; we have decided to provide an affirmative defense to penalties for violations of the flare limits during malfunction, startup, and shutdown. While our action on this FIP may have some impact on other SIPs and FIPs based on the logic we have applied, our rule is only directly applicable to the four sources subject to the FIP. It is possible EPA may reach a different decision in future rulemaking.

(f) *Comment (API, COPC, MSCC, ExxonMobil):* While EPA's 1999 Malfunction policy does state EPA's position that affirmative defenses are not appropriate ''where a single source or small group of sources has the potential to cause an exceedence of the NAAQS,'' API and others are unaware of any instance where EPA has utilized this exception from its general policy allowing for the assertion of affirmative defenses during malfunctions. In this case, EPA has made no demonstration to justify an exception to the general allowance for affirmative defenses for malfunction events. Consequently, API urges EPA to allow the assertion of affirmative defenses in the final FIP. Additionally, ConocoPhillips indicated that because of the harsh consequences, EPA should only apply this exception to its policy where it is clearly demonstrated that there is very real, extended potential for a single or small group of sources to cause an exceedence of the NAAQS. This is not present in this case. In fact, actual monitoring has shown that even during malfunction, ambient NAAQS violations do not occur. ConocoPhillips urges EPA to allow the assertion of affirmative defenses for both penalties and injunctive relief in the final FIP.

Response: See our prior responses to comments II.D.5.(a), (d), and (e). Also, we note that on two occasions, one in 1985 and one in 1995, flaring resulting from malfunctions at ConocoPhillips caused ambient exceedances of the SO_2 NAAQS (see reference documents DDDDDDD and EEEEEEE).

(g) *Comment (NEDA/CAP, MSCC):* The proposed FIP appears to misinterpret the 1999 Malfunction Policy. The July 12 preamble for adoption of the FIP appears to suggest that prosecutorial discretion would never be allowed in a nonattainment area where the agency decides that ''one or a group of sources are directly implicated in nonattainment of a NAAQS.'' In fact, the 1999 Policy recommends that such situations have to be addressed in the underlying standards themselves through narrowly-tailored SIP revisions. Moreover, in no event does the 1999 Malfunction Policy ever prohibit the use of prosecutorial discretion.

Response: Enforcement discretion or prosecutorial discretion is always available. The question in this case was whether it was appropriate to codify an affirmative defense, which we have done in our final rule. We have not misinterpreted our 1999 policy.

(h) *Comment (NEDA/CAP, API):* There is no rational basis in the proposed FIP or the 1999 Malfunction Policy to limit the affirmative defense to penalties. NEDA/CAP asserts that such a limitation is not reasonable since the malfunction condition during which the exceedence of the applicable limitation occurs would be unavoidable.

Response: We respectfully disagree. There could be instances in which malfunctions are unavoidable based on current plant layout and operating parameters but in which some form of corrective action would still be

appropriate. We cannot predict the exact nature of those circumstances, but protection of the NAAQS and public health is not an intermittent obligation; we are required to assure attainment and maintenance of the NAAQS at all times, not just when sources are in normal operation mode or when attainment is convenient. *See, e.g., City of Santa Rosa* v. *EPA*, 534 F.2d 150 (9th Cir. 1976), vacated and remanded on other grounds sub nom. *Pacific Legal Foundation* v. *EPA*, 429 U.S. 990 (1976) (''Neither EPA nor this court has any right to decide that it is better to maintain pollutants at a level hazardous to health than to require the degree of public sacrifice needed to reduce them to tolerable limits' '', citing *South Terminal Corp.* v. *EPA*, 504 F.2d 646, at 656 (1st Cir. 1974); *South Terminal Corp.* v. *EPA*, 504 F.2d 646, 675 (1st Cir. 1974) (''[I]t seems plain that Congress intended the Administrator to enforce compliance with air quality standards even if the costs were great.'') Preserving injunctive remedies ensures that we remain able to protect air quality standards and PSD increments in accordance with our fundamental responsibilities under the CAA. See CAA sections 110(a) and (l), 42 U.S.C. 7410(a) and (l). See, also, the discussion of this issue in our 1999 excess emissions memorandum, reference document RRR.

(i) *Comment (MSCC, ExxonMobil):* An exception and affirmative defense should be available under the FIP that is at least consistent with the consent decrees executed by EPA and the State of Montana with most of the affected sources.

Response: As we have noted previously, the consent decrees and the FIP serve different purposes. We have adopted an affirmative defense provision that is consistent with the protection of the NAAQS.

(j) *Comment (Citizen):* On page 39264 is the statement ''We are proposing that the flare limits will apply at all times without exception.'' Laudable as that seems, EPA then subsequently states, ''We solicit comment on whether it would be appropriate to include in our final FIP the ability to assert an affirmative defense to penalties only (not injunctive relief) for violations of flare limits.'' If the former statement is accepted, what are the penalties for exceeding flare limits and how will they be imposed and will the public be advised which refinery exceeds a flare limit and how often could that happen to the detriment of air quality in this area?

Response: In this final rulemaking action, we have promulgated an affirmative defense to penalties for exceedances of the flare limits during malfunction, startup, and shutdown. Under this approach all excess emissions are considered violations. However, if we or anyone else brings an enforcement action, the facility may then assert the defense to penalties. To establish the defense, the facility must demonstrate to the judge that it took appropriate steps to avoid the excess emissions and met other requirements, the details of which are contained in our final rule. If the facility cannot establish the defense, it may be subject to CAA penalties up to $32,500 per day. We do not typically advise the public when a limit is exceeded or which facility has exceeded a limit, although we often alert the public through the press when we bring an enforcement action. Under the FIP, the subject sources must submit reports to EPA identifying their emissions. Those reports are available to the public through the Freedom of Information Act (FOIA). The establishment of flare requirements should help reduce flaring incidents.

6. Installation of Additional SO_2 Reduction Equipment

Comment (ExxonMobil): EPA's proposed FIP does not allow for time for the design and installation of facilities necessary to comply with the proposed flare emissions limitations. The facilities required for compliance with the proposed FIP go above and beyond what was built for the SIP or what will be built for the Consent Decree. For EPA's proposed FIP, the required controls have not yet been identified.

Response: It is not clear what facilities the commenter is envisioning. Without greater detail, it is difficult to respond to the comment. However, the FIP imposes no specific requirement for the sources to install control equipment to limit flare emissions, and the limit we are imposing is the same one the State imposed on the sources, and which continues to be included in their permits. Our expectation is that sources will take all steps within their control to avoid flaring events and minimize their impacts on air quality if they do occur.

To the extent that the commenter is referring to the time needed to design and install flare monitoring systems required by the FIP, we have extended the deadline for installation from 180 days to 365 days after EPA approval of the flare monitoring plan.

E. Concerns With Dispersion Modeling

1. Policy Issues

(a) *Comment (MSCC, ExxonMobil):* Out-of-Date and Invalid Model Choice. (i) The proposed FIP uses the same model as that used in the SIP. EPA's models have changed since the time the SIP was developed. It is inappropriate to propose and justify more restrictive requirements on sources without considering more current modeling techniques and requirements. The older model may be more appropriate to confirm an existing situation or permit minor changes. However, the FIP goes beyond minor changes.

Response: The commenter is correct that a newer model is now available. For new SIPs, we would require states to use EPA's most recent model. However, this is a unique situation. The State developed the Billings/Laurel SO_2 SIP using the ISC model, which was current at that time, and we approved various source-specific emission limits in the SIP based on the State's modeling effort. The purpose of this FIP is to fill gaps in the approved SIP. We are not intending or required to re-do the entire SIP. See, *e.g.*, section 302(y) of the CAA, 42 U.S.C. 7602(y) (''Federal implementation plan'' means a plan (or portion thereof) promulgated by the Administrator to fill all or a portion of a gap or otherwise correct all or a portion of an inadequacy in a State implementation plan * * *''); *McCarthy* v. *Thomas*, 27 F.3d 1363, 1365 (9th Cir. 1994) (A FIP is ''a set of enforceable federal regulations that stand in the place of deficient portions of a SIP.'') Accordingly, we think it is reasonable to rely on the same model the State used to develop the SIP. That way, all emission limits in the SIP and FIP will have been established on the same basis.

We note that MDEQ tested the performance of the ISC model when the Billings/Laurel SO_2 SIP was being developed, and the results showed that the model performance exceeded the performance criteria for models of this type. The FIP modeling represents a minor change to MDEQ's basic approach. The sources in the SIP modeling are characterized in the modeling inputs as 25 point and volume sources and, except for minor corrections provided by the sources, the major FIP-related change in modeling involves only one source: The MSCC 100-meter stack. We had to change the inputs for MSCC's 100-meter stack because the State gave too much stack height credit to MSCC's stack in the SIP modeling, and we, consequently, disapproved MSCC's SIP emission limits and the SIP attainment

demonstration. Otherwise, the FIP modeling uses meteorology data, receptors, and stack parameters for sources other than MSCC that are nearly identical to those used in the SIP modeling.

We also note that ISC remained an accepted EPA model at the time we proposed our FIP, and it is reasonable to finalize the FIP based on the same model. Switching models after our proposal would have required us to re-propose the FIP and would have delayed the FIP further.

(ii) A newer model, ''AERMOD,'' has been adopted as the EPA regulatory default model. It is clear that AERMOD is now preferred for regulatory use over the model used in the SIP development. Consideration needs to be afforded to models available today, and particularly to the model reasonably believed to give the most accurate results. The stakeholder process should be used to determine which dispersion model should be used for the FIP (ExxonMobil).

Response: See our response to comment II.E.1.(a)(i), above. We also note that AERMOD has more complex software than ISC and, as a result, it would be extremely difficult to perform the 1320 model simulations necessary to establish emission limitations that would address buoyancy flux variations that were included in the State's SIP. A stakeholder process is not required by the CAA and would merely serve to delay issuance of the FIP.

(b) *Comment (MSCC):* Out-of-Date Model Input. Any dispersion modeling used for the proposed FIP must include improved techniques regarding building downwash. A new method for calculating the downwash effects buildings have on predicted ambient concentrations has been developed. The new technique is known as ''Plume Rise Model Enhancement'' (PRIME) algorithm. This technique is now commonly in practice in both ISC–PRIME and AERMOD. EPA's FIP modeling does not use this technique.

Response: The PRIME downwash technique was never formally adopted by EPA for use in ISC. In order for states to employ this technique, EPA regional offices needed to authorize its use on a case-by-case basis until ISC was replaced as the reference model on December 9, 2006. The plume rise technique used in ISC was the recommended approach at the time the State developed the SIP, and the technique served the modeling community well for many years.

(c) *Comment (MSCC, ExxonMobil):* Modeling Violates EPA's Own Requirements. The modeling used for the proposed FIP does not meet EPA's own guidelines and requirements because of the model used, lack of current building profile, and numerous other problems found elsewhere.

Response: See our response to comment II.E.1.(a)(i), above. The modeling approach was extensively discussed with regulatory agencies and the public when the SIP was developed, and the ISC-based modeling approach met the requirements of EPA's Guideline on Air Quality Models.

(d) *Comment (MSCC):* Modeling File Naming Convention. EPA's modeling files and Technical Support Document, both contained in the docket, do not provide a reference to the naming conventions used in the modeling effort. While it is possible to dissect some of the naming conventions, it was not possible to discern each and every file and its purpose. Therefore, the reviewers are not certain that all the modeling attempts, purposes and nuances have been accounted for in the analysis. The commenter recommends a more complete description of the naming convention and the purpose behind each modeling effort needs to be explained.

Response: At the recommendation of industry, MDEQ allowed the use of buoyancy flux in establishing emission limits, which made the modeling far more complex. As a result, many more modeling files are included than is typically the case in SIP modeling applications. To improve documentation, some extraneous modeling files have been removed and a text file added to explain naming conventions. The naming convention used for the Billings/Laurel SO_2 FIP modeling files is typical of that used by the modeling community. To a modeler, the naming convention helps define the purpose behind the modeling effort. On July 13, 2007, the revised modeling files were indexed in the electronic docket contained on *http://www.regulations.gov*, and a compact disk containing the modeling files was placed in the docket for this action. See reference document FFFFF.

(e) *Comment (MSCC, ExxonMobil):* Out-of-date and Invalid Emissions Rates. Federally enforceable emission rates from refinery consent decrees have not been included in the FIP modeling. EPA has used 10-year-old emission inventory data that compromise the accuracy of the results. Reductions that have occurred in the past ten years have been ignored. The settlement documents related to the 1998 SIP contain requirements that substantially change the SO_2 emission limits, and, therefore, the results of any modeling demonstration (ExxonMobil). Without including these existing emission reductions from the SIP and near term future reductions from consent decrees, EPA's proposed FIP ignores state and federally enforceable SO_2 emission reductions already in place.

Response: See our responses to comments II.A.2.(b), II.B.2.(d) and II.D.4. The FIP modeling accounts for the limits that we approved in the Billings/Laurel SO_2 SIP and those we are promulgating in the FIP. We cannot include State requirements that were not submitted with the SIP. Additionally, the ExxonMobil consent decree limits have not been translated into short term emission limits by MDEQ and made a part of the SIP. Short term emission limits are required to ensure compliance with the 3-hour and 24-hour average SO_2 NAAQS. Also, the consent decrees do not address all of the stacks/sources involved in the SIP/FIP.

(f) *Comment (MSCC):* MSCC has concerns with using the SIP modeling. The predecessor model routines had been discredited (''invalidated'') in this valley following a study done years earlier by the State. The model, even in the 1990's, did not represent state of the art in modeling science and was admittedly prone to serious over-predictions, particularly in so-called intermediate and complex terrain.

Response: As noted above, the modeling was EPA's preferred model at the time of the SIP, has been validated for use in the Billings/Laurel area, and has been used extensively throughout the United States in setting emission limits for nearly two decades. The model has not been ''invalidated'' for use in the Billings/Laurel area. See also our discussion of related issues in our May 2, 2002, final action on the Billings/Laurel SO_2 SIP, 67 FR 22168, 22183.

(g) *Comment (ExxonMobil):* Only the current actually existing emission sources with proper geographical coordinates should be used as inputs to the dispersion model.

Response: We do not understand what the commenter is referring to when they indicate ''only the current actually existing emission sources * * * should be used as inputs to the dispersion model.'' With respect to geographical coordinates used in the modeling, they were provided by the sources in response to EPA's CAA Section 114 information request. The incorrect source coordinate for MSCC in the modeling files has been corrected.[12] On

[12] In reference document WW, Technical Support Document, Dispersion Modeling to Support Sulfur Dioxide (SO_2) Emission Limits in Federal

July 13, 2007, the revised modeling files were indexed in the electronic docket contained on *http://www.regulations.gov* and a compact disk containing the modeling files was placed in the docket for this action. See reference document FFFFF. To the extent the commenter is asserting that actual emission rates should be used as inputs to the dispersion model, we respectfully disagree. As described more fully in our response to comment II.E.1.(e), above, potential emissions rather than actual emissions are used in SO_2 attainment demonstrations, per longstanding EPA policy and 40 CFR part 51, Appendix W requirements. Accordingly, in our attainment demonstration, we modeled the emission limits we approved in the SIP and any new emission limits we are promulgating in the FIP. Thus, with the exception of certain units at MSCC, we modeled the same emission rates that the State used in its SIP modeling.

(h) *Comment (ExxonMobil):* Only the verified actual stack heights should be used as inputs to the dispersion model.

Response: Stack height regulations determine the stack height values that are used as inputs to dispersion models in SIP attainment demonstrations. In some cases this value may not be the same as the actual stack height. See 40 CFR 51.118. For example, under our stack height regulations, 65 meters is the appropriate stack height value for MSCC's SRU stack, even though the stack is 100 meters tall. We believe we have used the correct stack height values in all cases, and the commenter did not indicate that any specific stack height value we used in our modeling was incorrect.

(i) *Comment (ExxonMobil):* The meteorological data to be used as input to the dispersion model should reflect the most representative information. The meteorological set to be used should be chosen based on availability and based on those monitored parameters that are best able to take full advantage of the latest dispersion modeling techniques.

Response: EPA believes that the meteorological data from the Billings airport that was used in the SIP/FIP modeling is representative of conditions within the modeling domain. The Billings airport is located in an open area with good exposure to prevailing wind flow and has a long period of record. Five years of historical weather data (1984, 1986, 1987, 1988, and 1989) were used in the modeling to ensure that the full range of possible meteorological conditions were evaluated in the modeling. To our knowledge the Billings airport data have the longest period of record of any site in the Billings area. When the State developed the SIP modeling approach that EPA has now used for the FIP, the State tested ISC model performance using the Billings airport data. That evaluation showed acceptable model performance.

(j) *Comment (ExxonMobil):* EPA should be modeling emission rates to levels that predict values slightly less than the NAAQS. This modeling concept is referred to as ''pushing the model to failure.'' This approach is designed to determine the maximum emission limits allowed by regulation under acceptable modeling protocol. By proposing mass emission limits on flares of 150 pounds of SO_2 per 3-hour period or 500 pounds of SO_2 per calendar day, EPA has chosen to use, without further consideration, mass emission limits that do not ''push the model to failure'' but instead arbitrarily limit the sources to mass emission limits that go far beyond protecting the NAAQS.

Response: Emission inputs to the model were established using criteria contained in 40 CFR part 51, Appendix W, Section 8. The emission limits set by the modeling analysis are based on emission rates that would just meet the NAAQS. They are not based on ''arbitrary limits'' that go ''far beyond protecting the NAAQS''. For example, with the limits we are establishing and the SIP limits we approved, our modeling resulted in a high value of 354 $\mu g/m^3$ which would exactly meet the 24-hour SO_2 NAAQS of 365 $\mu g/m^3$ when background concentrations of 11 $\mu g/m^3$ are considered.

(k) *Comment (MDEQ):* Montana continues to affirm the use of the ICS3 model.

Response: We acknowledge receipt of the comment and the support for the model used.

(l) *Comment (ExxonMobil):* EPA has not used current accurate process and meteorological inputs in its modeling. This is contrary to EPA's assurance in its May 2002 final rule that: ''Any future modeling in the Billings/Laurel area should incorporate all corrections. The SIP limitations are based on the best information available at the time the attainment demonstration was modeled, and the same will be true for any FIP limitations that are developed.'' 67 FR 22189. Also, in its May 2002 final rule, EPA stated that: ''We agree that future modeling should include all corrected data.'' 67 FR 22189. However, EPA has ignored critical factual data for purposes of developing the proposed FIP.

Response: The commenter ignores the context and meaning of EPA's statements in its 2002 SIP action. The cited quotes were part of our response to specific comments from one source that there were errors in the State modeling numbers used for that source's stack parameters. The comment was: ''CEMS data now indicate an error in the assumed buoyancy flux for MSCC's main stack; the current modeling protocol contains an assumption which significantly underestimates the average rise in emissions. Any revised modeling should correct this assumption.'' 67 FR 22189. We were merely agreeing that future modeling should include corrected stack parameters based on CEMS measurements: ''CEMS measurements of flow and temperature data provide the best estimates of stack parameters, and values based on CEMS data should be used in any future SIP modeling for Billings provided the CEMS data are accurate.'' *Id.* We were not indicating we would use a new model, different meteorological data, or consider entirely new structures. In fact, on the same page of our 2002 notice, we said the following:

''In addition, dispersion models and data bases are continually being improved. The task of demonstrating attainment could never be completed if we or the State were compelled to update the analysis with each new refinement. For the FIP, we intend to continue to use ISC2 as the applicable model to fill in the gaps in the State's attainment demonstration created by our disapproval of the emission limitations for MSCC's 100-meter stack. Some source parameters have been corrected since the 1994 modeling analysis (see Response V.D.4.(d), above), but we intend to use the same meteorological

Implementation Plan (FIP) for Billings/Laurel, Montana, June 2006, we indicated that one suggested change that was not incorporated into the EPA FIP modeling involved the coordinate system used in the model to identify source location. MDEQ developed the original source locations based on the UTM NAD27 (North America Datum of 1927) coordinate system, and EPA has retained that coordinate system in our modeling. It appeared that several of the suggested changes to source locations were based on NAD83 values. The newer coordinate system can affect source locations by up to 200 meters. In dispersion modeling on the scale of the current modeling domain, consistency between the source and receptor locations is the most important consideration. For this reason, suggested changes that appeared to be based on the NAD83 were not included in the modeling. However, changes that address local inconsistencies in measured distances between fixed stacks (such as at MSCC) on a specific property were incorporated in EPA's modeling using UTM NAD27. Sensitivity testing of the model showed that even the NAD27/NAD83 differences did not significantly affect total predicted concentrations; the principal effect was, in some instances, to shift the location of the maximum impact to a different receptor. An electronic record (compact disk) of EPA's sensitivity testing of the model is contained in the docket. See reference document EEE in Docket Number EPA–R08–OAR–2006–0098.

data and modeling protocols the State used, so that the results will be comparable.''

For a more complete discussion of our basis for selecting the model and data inputs we have used, please refer to the other responses to comments in this section II.E, our proposed FIP, and our TSD for the proposed FIP.

2. Technical Issues

(a) *Comment (MSCC, ExxonMobil):* Incorrect Source Location. The location of the small boiler stacks at MSCC that are modeled as a volume source is incorrect. The error occurs by the nature in which the X and Y coordinates are entered into the SRI file. The entry is off by one column.

Response: This has been corrected. On July 13, 2007, the revised modeling files were indexed in the electronic docket contained on *http://www.regulations.gov* and a compact disk containing the modeling files was placed in the docket for this action. See reference document FFFFF.

(b) *Comment (MSCC):* Incorrect Emission Rate. Table 2 of EPA's Dispersion Modeling Technical Support Document shows the modeling value of 136.21 g/sec for MSCC's SRU-100-meter stack. An emission rate of 150.0 g/sec was modeled in the majority of the EPA modeling. If the proposed emission limit of 3003.1 lb/3-hours (126.13 g/sec) is correct, then the number that should appear in both the table and the input files is 126.13 (g/sec) to be consistent with the emission limit.

Response: In the State's original SIP modeling submittal there were 1,320 modeling scenarios with various buoyancy flux combinations that were tested, and it was determined that only a few of these resulted in concentrations that threatened the NAAQS. EPA conducted screening to eliminate the need for refined modeling of those scenarios where the NAAQS were not threatened. The 150 g/sec emission rate was used provisionally to determine which modeling scenarios would result in the maximum ground level concentrations, and was not used to set MSCC's proposed emission limit. Once the appropriate modeling scenarios were determined by EPA, only those scenarios were used to conduct the refined modeling to establish an emission limit of 126.13 g/sec. The commenter is correct that there is a discrepancy between Table 2 in EPA's Dispersion Modeling Technical Support Document (reference document WW) and the modeling input files. The input files for the limited modeling scenarios reflected the correct value, 126.13 g/sec. Table 2 of the TSD contains the wrong value.

(c) *Comment (MSCC, ExxonMobil):* Missing Modeling Files. Three source input files (SRI files) were not included in Reference Document EEE, the basis for the modeling conclusion and the proposed emission limit for MSCC's 100 meter stack. It appears that these files were actually used in model runs.

Response: We have added the referenced modeling files. On July 13, 2007, the revised modeling files were indexed in the electronic docket contained on *http://www.regulations.gov* and a compact disk containing the modeling files was placed in the docket for this action. See reference document FFFFF.

(d) *Comment (MSCC, ExxonMobil):* Hanging Modeling Files. A source input file (ref_5t.sri) is included in Reference Document EEE. However, this input file does not appear to be used in any input (RUN) and output files (OPF) files. It is not possible to comment effectively on the adequacy of the model without knowing the file's purpose.

Response: This was a test file inadvertently included in the electronic record. It has now been deleted. On July 13, 2007, the revised modeling files were indexed in the electronic docket contained on *http://www.regulations.gov* and a compact disk containing the modeling files was placed in the docket for this action. See reference document FFFFF.

(e) *Comment (MSCC, ExxonMobil):* Outdated Building Profile Data. The dispersion modeling runs do not contain up-to-date information regarding building profile data. EPA's use of 10-year old historical data is not logical considering the agency requested and received certain building data in its December 2003 request.

Response: Building profile data were current at the time the MDEQ prepared the SIP. EPA is not updating the inputs to reflect recent changes in building dimensions or changes in dispersion models. We are simply correcting deficiencies in the MDEQ's SIP modeling. If we were to follow the commenters' suggestion, we would have to revisit the entire SIP, including SIP limits we approved. The CAA does not require us to re-open the entire SIP. See response to comment II.E.1.(a), above.

(f) *Comment (MSCC):* Variable ''HB'' and ''PW'' Not Used. In order to execute the FIP model, EPA requested source specific information including the modeling terms HB and PW. These values may be input into the IGM model, however, this information is superseded by direction-specific building parameters by the model while executing in all cases (stacks) of interest. In other words, the data that was coded by EPA in the model runs were ignored by IGM (in favor of other information) and therefore of no value. Instead, specific building data (discussed above) should have been entered into the program. There is at least one substantial building, the YELP coke barn, that should have been included in the 2006 model runs.

Response: See responses to comments II.E.1.(a) and II.E.2.(e), above. As noted above, to the extent possible, EPA is using the model inputs and model settings selected by the State at the time of SIP preparation and used in the IGM code. The model input selections reflect modeling practice and conditions at the time of the SIP. The coke barn did not exist at the time the SIP was prepared.

HB and PW values reflect the dimensions of the facilities that had large structures nearby and that MDEQ included for downwash processing in their SIP modeling. While the commenter is correct that, in the IGM model, these values were superseded by other data, obtaining these values was useful to us as a screening tool, and inputting these values into the model did not affect the validity of the results.

(g) *Comment (MSCC, ExxonMobil):* Compliance Analysis Not Valid. The FIP proposal notes that there is a ''trigger point'' of 500 lb/calendar day in various ''settlements'' between EPA and refineries. The proposal goes on to assert that a modeling analysis was conducted assuming the flares emitted SO_2 at a rate of 500 lb/3-hours and that the model demonstrated compliance to this alternative. A review of the modeling files, however, indicates that the ''controlling'' model run that defined MSCC's emission limit for the 100-meter stack (modeled at 65 meters) did not include this 500 lb/3-hour flare emission rate option.

Response: We solicited comment on whether we should limit the flares to 500 lbs of SO_2 per calendar day. We have not adopted that option. But, for purposes of the attainment demonstration, we modeled the 500 lbs as if it were emitted over a 3-hour period rather than a calendar day. We wanted to assure that if all the calendar-day allowed emissions were emitted in a 3-hour period, the 3-hour NAAQS would still be protected. Those modeling files are contained in the docket.

However, the controlling model run that defined MSCC's emission limit for the SRU 100-meter stack was for the 24-hour NAAQS. There was no need to model the 500 lbs of SO_2/calendar day to show compliance with the 24-hour NAAQS since we had already modeled the flares at 1200 lbs of SO_2/calendar

day. Since attainment of the 24-hour NAAQS was shown at 1200 lbs of SO_2/calendar day, the area would still show attainment at 500 lbs of SO_2/calendar day.

F. Miscellaneous Comments

1. Stakeholder Process

(a) *Comment (CHS Inc.):* If EPA intends to regulate malfunctions, startups, and shutdowns, a stakeholder's process should be used to accurately develop a reasonable flare limit.

Response: EPA announced its proposed FIP in the **Federal Register** on July 12, 2006, invited public comment, and identified the time and place for a public hearing. A public hearing was held in Billings, Montana, on August 10, 2006. Only one person from industry spoke at the hearing. Prior to the hearing and at the hearing itself, no one mentioned the concept of a stakeholder process. In addition, we provided nearly four months for the affected facilities and other members of the public to submit written comments and suggestions regarding our proposed FIP, including a substantial extension to our original 60-day comment period in an attempt to reasonably accommodate State and industry requests. We have made a number of changes in response to comments received. If the affected facilities had other ideas about how we could better structure the FIP, they had ample opportunity to express those concepts.

We have complied with the requirements of the CAA as set forth in section 307(d) regarding public participation for the FIP. We are not required to hold a stakeholder process. Issues regarding malfunctions, startups, and shutdowns are addressed above.

(b) *Comment (CHS Inc., ExxonMobil, MPA):* It would be in the best interest of all involved that a stakeholder process be used to determine what, if any, enhancements to the Montana SIP are appropriate.

Response: See response to comment II.F.1.(a), above.

(c) *Comment (WETA, COPC):* If the EPA feels strongly that consideration should be given to different controls for SO_2, then a stakeholder process should be utilized to consider issues and relevant information in deciding if a further SIP or FIP is necessary.

Response: See response to comment II.F.1.(a), above.

(d) *Comment (MSCC, ExxonMobil):* EPA has developed the proposed FIP in a vacuum as to the affected parties. It is inappropriate for EPA to not consult the affected facilities in any meaningful way. The process used by Montana in developing the SIP should be used in the FIP. A stakeholder process will allow all parties an opportunity to ensure that the best available information is considered in formulating any proposed requirements.

Response: See response to comment II.F.1.(a), above.

2. Ripple Effect

(a) *Comment (WETA):* The commenter is concerned not only with the impact of the FIP on the refineries in the area but the potential ripple effect on the businesses, workers, and other consumers who daily use and depend on the variety of products produced by the petroleum refineries in the Billings/Laurel area.

Response: We acknowledge the commenter's concerns. We recognize that our FIP will result in costs to MSCC and the refineries, which they may or may not pass on to consumers. We have tried to be sensitive to the costs MSCC and the refineries may incur to meet the FIP's requirements, which potentially would affect the costs of products to consumers. For example, where we determined less costly methods to monitor SO_2 concentrations could achieve similar results, we are allowing these other methods to be used. However, our ultimate charge under the CAA is to protect the SO_2 NAAQS, recognizing that cost impacts to sources and consumers may occur. *See, e.g., City of Santa Rosa* v. *EPA,* 534 F.2d 150 (9th Cir.1976), vacated and remanded on other grounds sub nom. *Pacific Legal Foundation* v. *EPA,* 429 U.S. 990 (1976).

(b) *Comment (citizen):* The commenter is a dryland farmer and uses an ammonium sulfate (thiasol) fertilizer, which is a by-product of the refinery process. He says he is doing as much as he can to be environmentally conscientious and not introduce metals into the soils found in other fertilizers. This requires him to use the thiasol that is refinery-produced. He requests that EPA not exacerbate a bad situation for agriculture, which increases costs to a major industry which is marginal in profitability and major in importance to the State of Montana.

Response: See response to comment II.F.2.(a), above.

3. Extend Comment Period

Comment (COPC, ExxonMobil, MSCC, WETA, YCC): Commenters asked for additional time to comment on the proposed FIP, until at least December 11, 2006.

Response: The public comment period on the FIP proposal ran from July 12, 2006, through November 3, 2006—almost four months. Additionally, a public hearing was held in Billings, Montana, on August 10, 2006. EPA believes it provided sufficient time and opportunity for all commenters to provide comments on the proposed FIP.

4. EPA's Strategic Plan

Comment (COPC): The proposed FIP, which contains inflexible flare emission limits and strictly-specified monitor installations requirements, is inconsistent with EPA's Strategic Plan, which commits EPA to ''finding innovative solutions and collaborating with others.''

Response: We acknowledge the commenter's concerns. However, we are charged with meeting the CAA's requirement to assure that the SO_2 NAAQS are met and maintained. Accordingly, the FIP adopts flare emission limits and compliance determining methods.

It should be noted that the discussion on Innovation and Collaboration in the ''2006–2011 EPA Strategic Plan, Charting Our Course,'' September 2006 (reference document BBBBBB), pertains to complex environmental challenges where broad-based problems cannot be solved with conventional regulatory controls. We do not think this is relevant here. We are merely establishing limits on flares and methods to determine compliance with those limits.

5. FIP Provisions in Title V Permits

Comment (MDEQ): Montana acknowledges that the FIP provisions, if promulgated, will be incorporated in Title V permits. However, Montana expects EPA will take the lead on implementing and enforcing the FIP provisions.

Response: EPA intends to assume primary responsibility to implement and enforce the FIP. However, the FIP requirements will be ''applicable requirements'' under Title V, which, therefore, must be included in Title V permits for the affected sources and be enforceable by the State.

6. Length of Time it Took EPA To Propose FIP

Comment (YVAS): Since the 1990 Clean Air Act requires NAAQS for SO_2 to protect public health, YVAS deplores this ''inadequacy [sic] and ''non-attainment'' and deplores further that the EPA did not adequately and in timely fashion, take necessary steps to enforce the CAA's provisions to protect the air quality in the Billings/Laurel area in a reasonably suitable time period regardless of any mitigating circumstances. A specific justification explaining this lapse in EPA's

responsibilities for not acting in the public interest is essential to the residents of the Billings/Laurel area given that at the time, the Billings/Laurel Sulphur Dioxide Area was subject to excessive amounts—estimated to be over 35,000 tons (1993)—of SO_2 atmospheric pollution.

Response: We believe EPA's SIP Call and subsequent State and EPA actions to address the SIP Call have helped reduce SO_2 emissions in the Billings/Laurel area. There is no question that this process has taken longer than it should have.

7. EPA Enforcement

Comment (YVAS): YVAS insists that the EPA consistently monitor industry emissions in order that industry sources continue to comply with the SIP and/or the ''more stringent requirements under other provisions of the CAA'' or ''SIP-approved permit programs.''

Response: EPA intends to take the lead in enforcing the emission limits and monitoring requirements contained in the FIP. Congress intended that states have primary responsibility for implementing and enforcing their SIPs. Additionally, states may take the lead in implementing and enforcing other CAA programs (*e.g.*, News Source Performance Standards (NSPS), Maximum Achievable Control Technology (MACT) standards, Title V permitting), either through EPA delegation or program approvals. In the latter cases, we have an oversight role and may take enforcement action under section 113 of the CAA for violations of a SIP or other CAA requirements when a state does not take action or when its action is considered ineffective.

EPA Region 8 communicates regularly with the MDEQ regarding sources. We have regular meetings with MDEQ regarding sources that are violating emission limit requirements and discuss the MDEQ's proposed or ongoing actions to address these violations. We intend to continue to carry out our oversight responsibility for the SIP and other CAA requirements for the Billings/Laurel sources. If we determine that the MDEQ is not taking appropriate action for violations of the SIP, or other CAA requirements, we will take appropriate action.

8. Further Emission Reductions

Comment (YVAS): Although the industry is attaining lower yearly decreases of SO_2 since 1994, with presumably a better and ''healthier'' air quality in the area thereby, the assumption logically follows that industry should be required to comply with further reduced SO_2 release levels. Nowhere in this FIP is there an attempt to address the issue of a further reduction in the total emissions of the industrial sources in the Billings/Laurel area. Accordingly, YVAS believes that all anti-lower SO_2 emission arguments are irrelevant against the demand for protecting public health standards and additional reduction of SO_2 emissions is mandatory under the CAA. Failing to address a further SO_2 emissions reduction should be considered another serious breach of your responsibility to the Billings/Laurel public. Why did EPA not include a discussion towards reducing the total SO_2 emissions in the Billings/Laurel Sulphur Dioxide area in this FIP and since EPA did not include that discussion here, does EPA plan to do that and if so, when?

Response: The 1970 CAA established the air quality management process as a basic philosophy for air pollution control in this country. Under this system, we establish air quality goals (NAAQS) for criteria pollutants. States develop control programs (termed SIPs) to attain and maintain these NAAQS. Our fundamental obligation in the SIP/FIP context is to ensure that the NAAQS are met, not reduce emissions to zero. Thus a reduction of SO_2 emissions is mandatory only to the extent needed to attain the NAAQS. However, under section 116 of the CAA, states may adopt and enforce any air pollutant standard, limitation, or control requirement so long as it is no less stringent than that required by the CAA. Put another way, states can require that the air be cleaner than the NAAQS. Our goal in the FIP is to ensure attainment of the SO_2 NAAQS.

9. SO_2 NAAQS

(a) Comment (YVAS): Nowhere in this FIP is any reference made to what clean air standards should be under the CAA or NAAQS. Commenters should have been informed as to those standards in this FIP in order to fairly judge as acceptable or non-acceptable the release standards proposed for the sources in this FIP. How can the public adequately comment on clean air issues when those standards are unknown to the public? Further, referring the general public to sources where those standards would be found is a disservice to the public since many of those sources of such information may be unattainable or unavailable.

Response: The July 12, 2006, proposed FIP did identify the 24-hour and 3-hour SO_2 NAAQS under the modeling discussion (71 FR 39259, starting at 71 FR 39270, col. 1). The SO_2 NAAQS were previously established (see discussion below), and EPA was not seeking comment on any changes to the NAAQS in this FIP action.

Two sections of the CAA govern the establishment and revision of NAAQS. Section 108 (42 U.S.C. 7408) directs the Administrator to identify pollutants which ''may reasonably be anticipated to endanger public health or welfare'' and to issue air quality criteria for them. These air quality criteria are to ''reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of [a] pollutant in the ambient air.''

Section 109 (42 U.S.C. 7409) directs the Administrator to propose and promulgate ''primary'' and ''secondary'' NAAQS for pollutants identified under section 108. Section 109(b)(1) defines a primary standard as one ''the attainment and maintenance of which, in the judgement of the Administrator, based on the criteria and allowing an adequate margin of safety, [is] requisite to protect the public health.'' A secondary standard, as defined in section 109(b)(2), must ''specify a level of air quality the attainment and maintenance of which, in the judgement of the Administrator, based on [the] criteria, is requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of [the] pollutant in the ambient air.'' Welfare effects are defined in section 302(h), 42 U.S.C. 7602(h), to include ''effects on soils, water, crops, vegetation, manmade materials, animals, wildlife, weather, visibility and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being.''

On April 30, 1971 (reference document CCCCCC), the Environmental Protection Agency (EPA) promulgated primary and secondary NAAQS for sulfur oxides (SO_x) (measured as SO_2) (then codified as 40 CFR 410.4 and 410.5). The primary standards were set at 365 micrograms per cubic meter (µg/m3) (0.14 parts per million (ppm)), averaged over a 24-hour period and not to be exceeded more than once per year, and 80 µg/m3 (0.03 ppm) annual arithmetic mean. The secondary standard was set at 1,300 µg/m3 (0.5 ppm) averaged over a period of 3 hours and not to be exceeded more than once per year. In accordance with sections 108 and 109 of the CAA, in the 1990's, EPA reviewed and revised the health and welfare criteria upon which these primary and secondary SO_2 standards were based. On April 21, 1993 (58 FR 21351) (reference document DDDDDD),

EPA announced its final decision under section 109(d)(1) of the CAA that the revisions of the secondary SO_2 NAAQS were not appropriate at that time. On May 22, 1996 (61 FR 25566) (reference document EEEEEE), EPA announced its final decision under section 109(d)(1) of the CAA that the revision of the primary SO_2 NAAQS was not appropriate at that time. EPA is currently reviewing the primary and secondary standards again to determine whether they should be revised.

The Code of Federal Regulations (CFR) is available at most public libraries and on the internet at: *http://ecfr.gpoaccess.gov/*. Likewise, the CAA is also available at most public libraries and on the internet at EPA's Web site: *http://www.epa.gov/air/caa/*.

(b) *Comment (citizen):* The rejection of Montana's Plan to control air quality in the Billings/Laurel air shed 4 years previously has left a serious gap in the air quality in this air shed.

Response: We acknowledge this comment. See response to comment II.F.6., above.

10. SO_2 Health Effects

(a) *Comment (Citizen):* The air is so bad near the commenter's house that she needs to close the windows. She has headaches and burning eyes and sinuses. How safe is it for the families? Commenter is concerned that air emissions affect landscape and river areas. Commenter would like EPA to assure that refineries do not off-gas unmeasureable blasts of pollution as she has seen them do over her water, county, and home.

Response: We acknowledge this comment. The FIP, along with other requirements contained in the SIP, will provide an enforceable mechanism to assure that the SO_2 NAAQS in the future will be protected in the Billings/Laurel area. Since EPA initially requested the State to revise the Billings/Laurel SO_2 SIP, actual SO_2 emissions from companies have been cut by more than half and there have been measured improvements in air quality. The SIP and FIP contain an enforceable control strategy to help ensure that the SO_2 NAAQS are attained and maintained.

(b) *Comment (Citizen):* Since national air quality standards are more stringent than Montana requires, serious health risks to area residents is probable and cannot be ignored.

Response: See response to comment II.F.10.(a), above. Note that the State's ambient standards, in some cases, are more stringent than the national standards. Subchapter 2 of the Administrative Rules of Montana (ARM) contains the Montana ambient air quality standards (MAAQS). The MAAQS are not contained in the federally-approved SIP; the CAA does not require that the standards be in the federally-approved SIP. The SO_2 MAAQS are contained in ARM 17.8.210 (see reference document FFFFFF) and are as follows: (1)(a) Hourly average—0.50 ppm, not to be exceeded more than 18 times in any 12 consecutive months; (1)(b) 24-hour average—0.10 ppm, not to be exceeded more than once per year; and (1)(c) annual average—0.02 ppm, not to be exceeded. The 24-hour and annual SO_2 MAAQS are more stringent than EPA's 24-hour and annual SO_2 NAAQS. The State has a 1-hour average SO_2 MAAQS and EPA has a 3-hour average SO_2 NAAQS. The State does not require that plans be developed to assure attainment and maintenance of the MAAQS, whereas, EPA does require plans to assure that the NAAQS are attained and maintained.

(c) *Comment (Citizen):* Commenter works the evening shift near the industrial sector and the refineries and the coke plant. He notices that at night the air becomes more sour. Depending upon which way the wind is blowing or whatever is occurring in the area, it will burn his eyes and nose. It will start to burn his lungs and inflame his chest and it will make it harder for him to breathe. The air is like a smoke-filled barroom. He used to live in this area as well. Commenter feels it degrades the quality of his life. He's standing up for his lungs.

Response: See response to comment II.F.10.(a)., above.

11. Public Process

(a) *Comment (Citizen):* Since there has been no public disclosure of the EPA's plans for complying with the standards (considered as minimal by local public health advocates) as set forth in the National standards (which also have not been provided publicity to create public awareness of those standards), the EPA should not proceed with any rule making unless the public receives an opportunity to comment.

Response: EPA announced its proposed FIP in the **Federal Register** on July 12, 2006. In the July 12, 2006 **Federal Register** notice, EPA provided for the opportunity of a public hearing. A public hearing was held in Billings, Montana on August 10, 2006. At the hearing, EPA discussed its proposed FIP. Additionally, EPA's proposed notice indicated that detailed information regarding the proposed FIP was available on the Internet. We have complied with the requirements of section 307(d) of the CAA regarding public disclosure and the administrative requirements for proposing the FIP. We are announcing this final FIP in the **Federal Register** as well. A discussion of the SO_2 NAAQS is provided above.

(b) *Comment (Citizen):* Plans for controlling emissions ''at the source'' must be provided by the EPA at any public meeting announced by the EPA and those plans should be announced publicly in advance of the meeting in order for the public to understand what the effects and results of such plans will be on the air shed quality of the Billings/Laurel metropolitan area.

Response: See response to comment II.F.11.(a), above.

12. Stack Height

(a) *Comment (Citizen):* Included in EPA's emission control plans must be a stringent requirement that none of the three area refineries or the Montana Sulphur and Chemical company may construct any emissions stack or flaring system of 100 meters or higher. Information concerning the probable effects, distance, wind patterns, content etc. of the dispersal plumes of stacks of this height should be provided to the public at any hearing in order that public comment on this crucial aspect of the emission control plan may be properly analyzed. Under no circumstances should the 100-meter height be considered as a minimum permissible height by the EPA or by the companies involved for any stack or flaring system.

Response: EPA does not restrict the physical height of a smoke stack. See 40 CFR 51.118(a). However, we do restrict the credit a company receives for its stack height in the modeling used to determine whether a SIP will meet national standards for specific air pollutants. *Id.* The stack height credit is based on the greater of the following: (1) A height of 65 meters, (2) a height based on a formula that considers the surrounding buildings, or (3) a height based on technical modeling studies which show a certain height is necessary to avoid high levels of pollutants in the nearby area. See 40 CFR 51.100(ii).

EPA has rules that apply to tall stacks; otherwise, companies could avoid installing needed pollution control equipment. Industry could simply build higher stacks and emit into the air additional pollutant levels that would not violate local air quality standards, but could eventually affect the air quality of communities farther downwind. This is because the higher the stack height, the greater the dispersion of pollutants and the less likely they will reach the ground in the

vicinity of the stack. EPA does allow increases to stack height credits when the stacks meet the conditions noted above.

EPA disapproved part of the Billings/Laurel SO_2 SIP because MSCC's stack height credit did not meet the conditions noted above. EPA believes that the appropriate stack height credit for the MSCC SRU 100-meter stack is 65 meters. The 65-meter stack height credit was used in the modeling for the FIP. We did not identify any other concerns with the stack height credit used for other sources in the SIP.

(b) *Comment (Citizen):* Studies, including wind roses of the dispersal pattern of all stacks of 65 meters and higher should be provided to the public at a hearing of the final FIP, in order that the public comment on this crucial aspect of the emission control plan may be properly analyzed.

Response: The CAA directs EPA to take public comment on proposed FIPs, not final FIPs. See CAA section 307(d). EPA's modeling studies for the proposed FIP were contained in the docket for the proposed FIP and available for review during the comment period on the proposed FIP. Additionally, on July 13, 2007, the revised modeling files were indexed in the electronic docket contained on *http://www.regulations.gov* and a compact disk containing the modeling files was placed in the docket for this action. See reference document FFFFF.

13. General Support

(a) *Comment (Citizen):* The commenter wants to lend support to what EPA is trying to do here and the proposals that EPA is making, and he thinks it is very much on target and for his benefit, and he would hope the industries who are being regulated in this sense will find a way to make it worth their while to do it also.

Response: We acknowledge receipt of the comment and the support for our proposal.

(b) *Comment (Citizen):* Commenter encourages EPA to carry on the work we have been doing, to encourage movement in the positive direction of reducing emissions.

Response: We acknowledge receipt of the comment and the support for our proposal.

(c) *Comment (Citizen):* Commenter appreciates the changes that EPA is making and thinks the people in Billings deserve them. Commenter feels the industries need to step up to the plate and be responsible for their emissions.

Response: We acknowledge receipt of the comment and the support for our proposal.

14. SIP Escape Clause

Comment (MSCC): The SIP contains an important ''escape clause'' by which there was a general agreement that if the State provided more favorable treatment to one facility, the same accommodation would be offered to the other facilities. The present proposed FIP which proposes to reduce MSCC's stack height credit and drastically reduce MSCC's emission limits will violate that clause. This unwarranted intrusion into a carefully-bargained agreement among multiple parties, violates both the letter and the spirit of the CAA.

Response: We are not bound by the escape clause that the State approved; in fact, we disapproved this aspect of the SIP. See 67 FR 22168, May 2, 2002. Instead, we are obligated to correct the portions of the SIP we disapproved. We disapproved MSCC's main stack emission limits because they were based on inappropriate stack height credit. The FIP establishes new limits for MSCC's main stack that are consistent with our modeled attainment demonstration, based on a Good Engineering Practice (GEP) stack height credit of 65 meters. While it is not clear to us how this violates the State-approved escape clause, setting emission limits for MSCC's main stack consistent with our stack height regulations and necessary to demonstrate attainment of the NAAQS does not violate the CAA. On the contrary, setting such limits is required by the CAA, regardless of the State-approved escape clause.

G. MSCC Specific Issues

1. Variable Emission Limit

(a) *Comment (MSCC):* EPA offers surprisingly little discussion as to why a variable limit was not proposed for Montana Sulphur. EPA's reasoning seems to ignore that MSCC has been operating under a variable emissions limit that has been modeled, monitored, and enforced for close to a decade.

Response: EPA's reasoning for not offering a variable limit is discussed in the July 12, 2006, proposal notice (see 71 FR 39259, starting at 39268, col. 2) and reference document WW ''Technical Support Document'' contained in EPA Docket No. EPA–R08–OAR–2006–0098. Additionally, to our knowledge, the SIP limits for two sources in Billings (ExxonMobil and Montana Power) are the only instances in the United States where variable emission limits based on buoyancy flux have been adopted, approved, and implemented. The thousands of other emission limitations nationwide are based on a single fixed buoyancy flux value similar to what we proposed for MSCC.

(b) *Comment (MSCC):* Complicated to Model. (i) MSCC agrees that it is more complicated to model a variable emission rate than a fixed emission rate. That alone is not sufficient reason to deny MSCC the variable emission rate. Also, much has changed since the original modeling effort. Computer speed, memory, data handling, and storage are all improved.

Response: Modeling was one of the reasons we offered for not providing a variable emission limit; however, it was not the only reason. Although computer speed, data handling, and storage are improved since the MDEQ developed the Billings/Laurel SO_2 SIP, there would still be a considerable effort on EPA's part to model a variable emission limit for the SRU 100-meter stack. Therefore, we used EPA's historical practice of selecting mean values of historical data.

Individual stationary sources in SIP attainment demonstrations are typically modeled assuming a single representative value for the model input parameters that affect plume rise. Model input parameters that affect plume rise include stack gas temperature and volume flow, or buoyancy flux. If emissions are held constant, ground level concentrations would tend to decrease during periods with higher plume rise associated with elevated stack gas temperature and increased stack flow velocities. Conversely, ground level concentrations would tend to increase during periods with reduced stack gas temperatures and stack flow velocities. The State opted to set emission limitations based on variable buoyancy flux values for three of the sources. MDEQ identified a total of 11 buoyancy flux modeling scenarios for MSCC, 12 for ExxonMobil, and 10 for the Corette Power Plant. Modeling all possible combinations of scenarios required the State to model a total of 1,320 combinations for each year of meteorological data processed. EPA used a fixed buoyancy flux value for modeling MSCC and that reduced the number of potential modeling scenarios to 120. EPA reviewed the modeling results in the State's attainment modeling to identify which scenarios (of the 120 possible scenarios) would produce the highest concentrations. Based on this selection process, EPA modeled approximately 50 scenarios in the FIP modeling, and we believe that these scenarios represent the limiting

(i.e. maximum predicted concentration) case.

(ii) It is completely arbitrary to create, model, approve, monitor, and enforce variable limits at other Billings facilities but to deny the same courtesy for MSCC claiming that it is, in this case alone, too complicated a modeling effort.

Response: Again, modeling was not the sole reason for not providing a variable emission limit for MSCC's SRU 100-meter stack. Although EPA approved the variable emission limits at other Billings facilities, we did so with reservations. (*See* our July 28, 1999, proposed rulemaking action on the Billings/Laurel SO_2 SIP, 64 FR 40791, starting at 40794, col. 3, and our May 2, 2002, final rulemaking action, 67 FR 22168, starting at 22206, col. 2, for a full discussion of our concerns with the variable emission limit concept.) Since EPA is taking the lead in establishing emission limits for MSCC's SRU 100-meter stack and will take the lead in enforcing the FIP, EPA has chosen not to model and provide a variable emission limit. We believe our exercise of discretion so as to simplify FIP development and enforcement is reasonable, particularly where the data indicate MSCC will be able to comply with a fixed emission limit without additional controls and where fixed limits are the norm in SIPs throughout the country.

(c) *Comment (MSCC):* Complicated to Monitor. Buoyancy flux has been measured and reported to DEQ for a period of about eight years, with very high reliability. It is simply illogical to argue or imply that monitoring buoyancy flux is a task not worthy or too complicated in nature. One cannot deny the historical evidence that it has been measured successfully for many years and that it does not require any monitor instrumentation not already required to measure sulfur dioxide.

Response: See response to comment II.G.1.(b)(ii), above.

(d) *Comment (MSCC):* Complicated to Enforce. EPA's reason for not proposing a variable limit for MSCC due to enforcement is puzzling. If EPA approved variable emission limits for other sources, even though the same enforcement concern exists, it should also be approved for MSCC.

Response: The State developed the original SIP that allows variable emissions for several sources. The State takes the lead in enforcing the SIP, and EPA takes an oversight role. EPA approved portions of the SIP, including variable emission limits at two sources, and we did so with reservations. Since we would be taking the lead in enforcing the FIP, we have chosen not to place an increased burden on ourselves to enforce a variable limit. See also the response to comment II.G.1.(e), below.

(e) *Comment (MSCC):* Variable Limit is Better Science. Though it involves incremental initial work, from a modeling perspective, the use of variable limits is better science. It replaces a false assumption in modeling (constant, average stack conditions under all operating scenarios) with factual information so that plume height, which is variable, can be more accurately represented. Plume height, just like mass emissions, is normally variable and is critical to calculation of downwind concentrations.

Response: In addition to looking at air quality impacts of the FIP, we also need to assure that the FIP is enforceable. Although we may agree with the commenter that the variable emission limitation will result in fewer emissions when the buoyancy of the plume is lower, it will also result in higher emissions when the buoyancy of the plume is higher. Additionally, a variable emission limit is more difficult to enforce. Granted the same instruments would be used to determine compliance whether the emission limit is fixed or variable. However, in addition to confirming that the source is in compliance with a variable emission limit, agencies will also need to confirm that the variable emission limitation was determined correctly. Therefore, we believe that variable emission limits increase the workload and add a layer of complexity that is not found with fixed emission limitations. Because of this enforcement complexity, we do not agree with the commenter that variable emission limitations are a superior approach to setting emission limitations.

(f) *Comment (MSCC):* Fixed Limit Compliance. Although MSCC has been able to meet the proposed FIP limit for several years, it must be noted that MSCC has not always been able to operate within such limits, and that MSCC was not operating its sulfur plant at maximum capacity during the time periods cited by EPA. The primary reason MSCC can operate under EPA's proposed limit arises from MSCC's voluntary installation of SuperClaus ™. The SuperClaus unit must be shut down periodically for repair. MSCC needs the variable limit to be in compliance when SuperClaus unit is shut down. MSCC should not be punished for its good behavior by requiring control technology and lower emissions than is necessary to maintain NAAQS.

Response: EPA's proposed FIP limit for MSCC's SRU 100-meter stack was determined through modeling as the limit needed to assure attainment of the SO_2 NAAQS. Since the NAAQS are health-based standards, as a general matter, SIPs/FIPs must assure attainment of the NAAQS on a continuous basis.

We note that apparently MSCC was able to conduct maintenance on the SuperClaus unit in 2003, 2004, and 2005 without exceeding the proposed 3-hour and 24-hour FIP SRU 100-meter limits. MSCC may be able to perform its maintenance on the SuperClaus unit when other process equipment at ExxonMobil is down for maintenance. Additionally, we understand that MSCC intends to install a second SuperClaus unit to provide redundancy to the existing SuperClaus equipment. Installation is expected to begin in the fourth quarter 2007, at the earliest (reference documents GGGGGG and BBBBBBB). Concerns about additional emissions during maintenance should be eliminated with the addition of a second SuperClaus unit.

2. 100-Meter Stack Height Credit and Emission Limit

(a) *Comment:* MSCC submitted summary comments regarding its position concerning good engineering practice stack height credit for the 100-meter SRU stack. MSCC noted that these comments had generally been submitted previously to both EPA and Montana. MSCC claimed that it has not received the proper stack height credit for the 100-meter SRU stack in the proposed FIP.

Response: EPA disapproved the State's determination of stack height credit for MSCC's 100-meter SRU stack on May 2, 2002 (67 FR 22168). In the May 2, 2002, notice, starting on page 22209, we responded to all the stack height comments MSCC previously submitted. We hereby incorporate by reference our responses from that notice. We indicated in the May 2, 2002, notice that ''[w]e considered the comments received and still believe we should finalize our proposed disapproval of the MSCC's stack height credit and SRU 100-meter stack emission limitations. None of the adverse comments has convinced us that our interpretation of the CAA and our regulations is unreasonable or that we should change our proposed course of action.'' See our May 2002 final action (67 FR 22168). EPA has determined that the GEP stack height credit for the 100-meter SRU stack is 65 meters and has used that height in establishing the 100-meter SRU stack emission limit. Our stack height regulations, codified at 40 CFR 51.100

and 51.118, provide that the degree of emission limitation required for pollutant control under an applicable SIP shall not be affected by stack height in excess of GEP stack height. The central component of the regulations consists of definitions of the term ''good engineering practice stack height.'' GEP stack height is the greater of (1) 65 meters (known as ''*de minimis*'' stack height), (2) the height calculated using a formula specified by regulations (''formula height''), or (3) the height demonstrated using fluid modeling or a field study (''non-formula height'' or ''above-formula height''). See 40 CFR 51.100(ii)(1)–(3). Prior to our SIP action, the State calculated the formula height for the SRU 100-meter stack to be 47.8 meters (see reference documents VVVVVV and WWWWWW). Per our regulations, since this is lower than 65 meters, GEP stack height is 65 meters. We have not received any new information to indicate formula height should be higher than 47.8 meters, nor have we received a valid demonstration for above-formula stack height credit. See our proposed and final actions on the Billings/Laurel SO_2 SIP, 64 FR 40791 (July 28, 1999) and 67 FR 22168 (May 2, 2002), respectively. In light of our prior decision on the fluid modeling in the SIP action, and in the absence of a new, valid, GEP stack height demonstration, it would be inappropriate in this FIP for us to use a stack height value for MSCC that is inconsistent with our prior action.

(b) *Comment (YVAS):* YVAS believes the annual emission limit of 9,088,000 lbs of sulphur is too excessive because YVAS believes this ''proposed'' emission to be a major contribution to the total emissions of sulphur dioxide in the Billings/Laurel area and is, therefore, not acceptable. In addition, EPA states that: ''We (EPA) are proposing fixed emission limits rather than variable emission limits on MSCC's SRU 100 meter stack because they are less complicated to model monitor and enforce.'' This proposal is inadequate and does not address the continuing high total SO_2 emission limits you intend permitting MSCC to continue to release.

Response: Stack emission limits are set to assure that the SO_2 NAAQS are met. As seen in the SIP and FIP, there are 3-hour, 24-hour, and annual SO_2 emission limits on most stacks. These emission limits assure that the 3-hour, 24-hour, and annual SO_2 NAAQS are attained and maintained. As indicated in the response to comment II.F.8., above, we cannot require states to adopt provisions that go beyond attaining and maintaining the NAAQS. The annual emission limit we proposed for the SRU 100-meter stack, and that we are now promulgating in the FIP, assures that the annual SO_2 NAAQS will be attained and maintained. Additionally, the 3-hour and 24-hour SO_2 NAAQS are more controlling than the annual SO_2 NAAQS. This means that more stringent emission limits must be placed on stacks to assure that the 3-hour and 24-hour SO_2 NAAQS are attained and maintained than would be required to assure that the annual SO_2 NAAQS are met.

(c) *Comment (Citizen):* Commenter appreciates the logic of not allowing increases in stack height credit.

Response: We acknowledge the support for our proposal. Also, please see our response to comment II.G.2.(a), above.

3. 30-Meter Stack and Auxiliary Vent Stack

(a) *Comment (MSCC):* Emissions monitoring for 30-meter Stack and Auxiliary Vent Stacks. EPA has proposed unnecessarily complex, redundant, and unneeded monitoring and reporting requirements for both the 30-meter stack and the auxiliary vent stacks. The emissions from these units have minimal impact on model results. These predicted concentrations are less than 1% of the NAAQS. The emission limit applicable is miniscule in comparison with other uncertainties in the implementation plan. Emissions from these units, although authorized, are infrequent. Venting to the boiler stack is generally associated with events such as maintenance. For operational reliability and flexibility, MSCC needs to be able to vent these boilers locally. Monitoring these units is an expense and requirement that serves no real or useful purpose. Essentially the same information is already gathered under the State plan.

Response: As we indicated in our July 12, 2006, proposed FIP (71 FR 39259, 39268), it is necessary for EPA to require methods to assure that the emission limits for the 30-meter stack and auxiliary vent stacks are met. However, since MSCC has already established a method to monitor these emissions using length-of-stain detector tubes (e.g., Dräger Tubes),[13] and since length-of-stain detector tubes are widely-used and reliable, we have revised the FIP to make its requirements similar to those MSCC must already meet under the State's operating permit. Specifically, we have revised the method by which MSCC shall determine the H_2S content of the fuel burned. Our final FIP indicates that on a once-per-3-hour period frequency until no heater or boiler is exhausting to the 30-meter stack or an auxiliary vent stack, MSCC shall determine the H_2S content of the fuel burned using length-of-stain detector tubes with the appropriate sample tube range pursuant to ASTM Method D4810–06, ''Standard Test Method for Hydrogen Sulfide in Natural Gas Using Length-of-Stain Detector Tubes'' (see reference document UUUUUU). The final FIP indicates that if the results exceed the tube's range, another tube of a higher range must be used until results are in the tube's range.

(b) *Comment (MSCC):* Emission Limit—100 ppm H_2S—A Redundant Limit. Having both a 12 lb/3-hour limit and 100 ppm H_2S limit creates double-jeopardy. Both limits are for solely and exactly the same thing. If a particular 3-hour period were to indicate 120 ppm, it would be in violation of both limits. This could (and is very likely to) occur even if the units were not, in fact, operating anywhere near an actual emission rate of 12 lbs/3-hours. This result is overkill and is not appropriate or necessary for protection of the NAAQS.

Response: In our FIP proposal, we were attempting to simplify the method to determine compliance with the mass emission limits. The assumption in the proposal was that if the H_2S concentration was below 100 ppm H_2S, then the source would be in compliance with the mass emission limits. We were not trying to create ''double jeopardy'' for MSCC. It appears that the commenter believes the 100 ppm H_2S limit is too restrictive because the source could be in compliance with the mass emission limit but out of compliance with the ppm limit.

In our final FIP we are keeping the simplified method to determine compliance with the mass emission limits. We believe determining direct compliance with the mass emission limits would either require additional monitoring equipment or methods and/or would be unreliable due to potential variation in boiler use and venting practices. However, to address the commenter's concern, we are increasing the H_2S concentration limit to 160 ppm per 3-hour period. We are adding a calendar day H_2S concentration limit of 100 ppm.

We selected the 160 ppm H_2S per 3-hour period limit for the following reasons. First, as explained in greater detail below, this value will protect the 3-hour SO_2 NAAQS. Second, 160 ppm

[13] See MSCC's ''Hydrogen Sulfide Fuel Gas Monitoring Plan,'' dated September 2000, that fulfilled requirements of Montana Air Quality Operating Permit 2611–00, Appendix H. (See reference document IIIIII.)

of H_2S per 3-hour period is the current NSPS limit for fuel gas combustion devices. EPA reported the following in its May 14, 2007, proposal to revise subpart J of the new source performance standards (NSPS), and to adopt new subpart Ja:

> after consideration of current operating practices, we concluded that amine scrubbing units are still the predominant technology for reduction of H_2S in fuel gas (and SO_2 emissions from subsequent fuel gas combustion). Considering the variability of the fuel gas streams from various refinery processing units, 160 ppmv also is still a realistic short term H_2S concentration limit. However, one California Air Quality Management District rule sets a 40 ppmv H_2S limit in fuel gas (averaged over 4 hours), and several refiners have reported that the typical fuel gas H_2S concentrations (after scrubbing) are in the same range.

(See 72 FR 27178, 27193.) Third, the State's SIP indicates that MSCC shall burn only low sulfur fuel gas or natural gas in any unit being exhausted through the 30-meter stack (see MSCC's exhibit A, reference document II). Low sulfur fuel gas is not defined in exhibit A. However, an MDEQ staff member indicated that the term ''low sulfur fuel gas'' in the SIP would be gas with an H_2S concentration much lower than the NSPS subpart J limit of 160 ppm (see reference document GGGGGG). This suggests that MSCC should already be achieving a daily limit of 100 ppm.

To test the use of a 160 ppm limit, we remodeled the area assuming the emissions were 1.01 g/s from the 30-meter stack and auxiliary vent stacks. We derived the higher emission value from the same assumptions and calculations expressed in our proposal, except we assumed a maximum H_2S concentration of 160 ppm (see 71 FR 39259, 39268, July 12, 2006). At the higher three hour emissions, the area would still show attainment of the 3-hour SO_2 NAAQS. However, the area would not show attainment of the 24-hour SO_2 NAAQS if all 3-hour periods in a calendar day were at the 160 ppm level. Therefore, we are revising the FIP to indicate that the H_2S concentration in the fuel burned in the heaters and boilers, while any of the heaters and boilers are exhausting to the SRU 30-meter stack or auxiliary vents stacks, shall not exceed 160 ppm per 3-hour period and 100 ppm per calendar day. The mass emission limits remain the same as proposed. The revised modeling files are indexed in the electronic docket contained on *http://www.regulations.gov,* and a compact disk containing the modeling files has been placed in the docket for this action. See reference document KKKKKK.

(c) *Comment (MSCC):* Emission Limit—100 ppm H_2S—Overly Stringent. The 100 ppm H_2S limit, which is a surrogate for the pound/hour SO_2 limit, is far too restrictive. EPA developed the 100 ppm H_2S limit based on conditions that have a miniscule probability of occurring. It has the effect of introducing a new, strict ''performance standard'' into the mix of limits, where such standard is not applicable.

Response: See response to II.G.3.(b), above. Also, in order to protect the NAAQS, it is reasonable to consider potential worst-case conditions in setting emission limits and compliance determining methods.

(d) *Comment (MSCC):* Monitoring Requirements. The requirement to monitor the auxiliary vent stacks has already been addressed through the State plan; there is no inadequacy or other basis to FIP this. The current system already periodically measures the H_2S content in the fuel gas header for gas that is not natural gas, using a simple portable detector (non-electronic) such as a Dräger tube or Gas-Tec tube. The frequency of testing necessity was determined through the State's plan and the frequency of such testing steps up in response to high measurements until the measurements have returned to low levels. The present plan also reasonably estimates the volume of gas used in each boiler to permit calculation of the SO_2 emitted by each auxiliary vent when in use, and logs the venting location, as the State plan provides.

Response: In large part, this comment appears to pertain to our disapproval of the relevant portion of the SIP. We note that we have not reopened our SIP action as part of this action and are not considering comments on that action here. To the extent the comment is relevant to our FIP action, see response to comment II.G.3.(b), above. As we explain there, the FIP retains the requirement that MSCC measure the H_2S content of the fuel burned but increases the 3-hour concentration limit to 160 ppm. The FIP also allows MSCC to use length-of-stain detector tubes in lieu of portable analyzers. However, based on comments received, we are not convinced that MSCC's current methods for determining direct compliance with the mass emission limits are sufficiently reliable or accurate for purposes of the FIP due to potential variation in boiler use and venting practices and lack of equipment to directly measure relevant parameters at or emissions from each boiler. We believe additional monitoring equipment would need to be installed, or additional monitoring would need to be performed, at greater expense to MSCC, to achieve adequate methods to determine direct compliance with the mass emission limits. The concentration limits we are imposing are reasonable, can be monitored at reasonable cost, and will ensure protection of the NAAQS.

(e) *Comment (MSCC):* Monitoring Cost. EPA proposes imposing significant overly burdensome on-going costs to track a minuscule amount of potential or actual SO_2 emissions.

Response: As we indicate in response to comment II.G.3.(a), we have revised the FIP to allow MSCC to use the same devices to determine H_2S concentrations in the gas going to the 30-meter stack and auxiliary vent stacks as MSCC is using to meet State requirements (length-of-stain detector tubes). While the frequency of monitoring may be somewhat different than the frequency under the State's permit, the final FIP should not result in any substantial additional monitoring costs for the 30-meter stack and the auxiliary vent stacks, particularly since MSCC indicates emissions from these stacks are infrequent.

H. ConocoPhillips Specific Issues

SRU/ATS Stack and Jupiter Flare

Comment (COPC): ConocoPhillips urges EPA to delete the proposed prohibition of simultaneous emissions from the SRU/ATS stack and the Jupiter flare even if the combined SO_2 emissions are less than 25 lb/hr. This merely imposes a compliance risk and produces no environmental benefit. Logic does not dictate that because both sources were modeled as one point, that combined, simultaneous emissions from both are prohibited. Quite the contrary, having modeled both sources as one point supports and endorses the option of both sources being able to emit a combined total of the amount of SO_2 which was modeled.

Response: EPA agrees that it is not necessary to prohibit simultaneous emissions from both emission points. Attainment of the SO_2 NAAQS would be assured so long as the combined emissions from both emission points do not exceed 75.0 pounds per 3-hour period. Since both emission points have methods for determining emissions, compliance with the emission limit would be assured. We are revising the regulatory text to eliminate the restriction on simultaneous emissions and any corresponding language. Additionally, in the final regulatory text we are clarifying the reporting

requirements to correspond to this change.

I. ExxonMobil Specific Issues

1. Coker CO Boiler

Comment (ExxonMobil): The proposed FIP would require that the Coker CO Boiler stack CEMS operate at all times. This is unnecessary because the Coker Process gas is exhausted through the nearby Yellowstone Energy Limited Partnership Co-Generation facility. During those hours, Coker CO Boiler stack SO_2 emissions are monitored by the existing fuel gas CEM for fuel gas combustion devices. The existing SO_2 SIP requires that a SO_2 CEMS be operated on the Coker CO Boiler stack during those few hours that the Coker Process Gas is exhausted through the Coker CO Boiler and stack. Given that a CEMS is already required for this source, nothing is served by requiring ExxonMobil to report the emissions and compliance assurance data for this source to both EPA and MDEQ. Nothing is served by requiring ExxonMobil to notify both EPA and MDEQ of required Relative Accuracy Test Audits (RATA).

Response: It was not EPA's intent to require that the Coker CO Boiler stack CEMS be operated at all times. Our intent was to clarify that the Coker CO Boiler CEMS already installed, in conjunction with the appropriate equations, must be used to determine compliance with the emission limits established in section 3(B)(1) of ExxonMobil's 2000 exhibit.

We are clarifying the FIP to indicate that the Coker CO Boiler CEMS only needs to be operating when ExxonMobil's Coker unit is operating and Coker unit flue gases are exhausted through the Coker CO Boiler stack. We are also clarifying that whenever ExxonMobil's Coker unit is operating and Coker unit flue gases are exhausted through the Coker CO Boiler stack, the CEMS shall immediately be operational. Also, with respect to the SO_2 CEMS, we indicate that ExxonMobil shall perform a Cylinder Gas Audit (CGA) or Relative Accuracy Audit (RAA), which meets the requirements of 40 CFR part 60, Appendix F, within 8 hours of when the Coker unit flue gases begin exhausting through the Coker CO Boiler stack. Finally, for both the SO_2 and flow CEMS, we indicate that ExxonMobil shall perform an annual RATA, on the CEMS.

Because we will have primary responsibility to enforce the FIP, we have retained the requirements that ExxonMobil submit emissions and compliance assurance data to both EPA and MDEQ and notify EPA and MDEQ of RATAs.

2. Tutwiler Analysis

Comment (ExxonMobil): The proposed FIP would require that ExxonMobil measure the H_2S concentration of the fuel gas once every three hours using the Tutwiler method contained in 40 CFR 60.648 any time the refinery fuel gas H_2S CEMS measures a concentration of greater than 1200 ppmv. The proposed once per 3-hour Tutwiler analysis is less protective than the existing requirement identified in the alternative monitoring plan (AMP) submitted to DEQ. The AMP requires measurement of the fuel gas H_2S concentration with Dräger tubes on an hourly basis anytime the fuel gas H_2S CEMS data are expected to be unavailable for any reason for more than one 3-hour block.

Response: In our proposed FIP, EPA proposed a method for determining H_2S concentrations when the range of the H_2S CEMS is exceeded. ExxonMobil commented that they currently use another method for determining H_2S concentrations when the H_2S CEMS is not available. This other method has been identified in an AMP submitted to DEQ (reference document JJJJJJ). Since ExxonMobil already has procedures established for determining H_2S concentrations when the H_2S CEMS is not available, namely, the use of Dräger Tubes, a type of length-of-stain detector tube, and since length-of-stain detector tubes are widely-used and reliable, EPA is revising its FIP to incorporate the other method identified by ExxonMobil.

Specifically, we are revising the FIP to indicate that when the H_2S concentration in the refinery fuel gas exceeds 1200 ppmv as measured by the H_2S CEMS, ExxonMobil shall measure the H_2S concentration on an hourly basis using length-of-stain detector tubes pursuant to ASTM Method D4810–06, ''Standard Test Method for Hydrogen Sulfide in Natural Gas Using Length-of-Stain Detector Tubes.'' The length-of-stain detector tubes shall have the appropriate sample tube range. If the results exceed the tube's range, another tube of a higher range must be used until results are in the tube's range. The hourly length-of-stain detector tubes data will then be used to calculate SO_2 emissions from refinery fuel gas combustion and to determine compliance with the emission limits in 40 CFR 52.1392(f)(3)(i).

3. ExxonMobil Emissions

Comment (YVAS): The question must be asked that since ExxonMobil's emissions are appreciably higher than its two closest competitors, that a significant lowering in total SO_2 emissions in the Yellowstone Valley could be attained if ExxonMobil would be required to use that equipment under either Federal EPA standards or under the State of Montana emissions requirements as well. That there is no requirement to insist that ExxonMobil use equipment/refining processes that would lower its future SO_2 emissions is a deplorable lack of public concern to YVAS' best interests and should be publicly examined by the EPA.

Response: EPA acknowledges this comment. See response to comment II.F.8., above.

J. CHS Inc. Specific Issues

Particulate Issues

Comment (YVAS): YVAS is concerned that the Coker production unit at CHS Inc. will not have to provide a containment system shielding the nearby area from the effects of particulate pollution. This is a deplorable lack of proper protection of the public and, although addressing this particular issue was apparently not important to this FIP, since it was completely omitted from this FIP, either through oversight or deliberate omission, YVAS seeks a ruling from the EPA that could require CHS, Inc. to address this issue and provide relief to the public from this oversight.

Response: EPA acknowledges the comment. However, the FIP addresses only the provisions of the SO_2 SIP that we disapproved. Under CAA section 110(c), EPA's authority is to remedy the deficiencies we identified in the SO_2 SIP.

III. Summary of the Final Rules and Changes From the July 12, 2006, Proposal

The following summarizes the final FIP and the major changes from our July 12, 2006, FIP proposal. Generally, the reasons for the changes made in the final FIP appear in section II, above, ''Issues Raised by Commenters and EPA's Response.'' In some cases, the reasons appear below. We also describe some minor changes to the FIP in this section.

A. Flare Requirements Applicable to All Sources

Since the State's attainment demonstration assumed that the main flares at each source were limited to 150 pounds of SO_2 per 3-hour period, and that the Jupiter Sulfur SRU flare would share an emission limit of 75 pounds of SO_2 per 3-hour period with the Jupiter

Sulfur SRU/ATS [14] stack, we proposed flare emission limits that reflected the State's assumption that emissions from these points would not exceed these levels. While we proposed that 150 pounds of SO_2 per 3-hour period be the limit for the main flares, we also solicited input on whether we should instead limit the main flares to 500 pounds of SO_2 per calendar day. The final FIP requires that the main flares at each source be limited to 150 pounds of SO_2 per 3-hour period and that the Jupiter Sulfur flare share an emission limit of 75 pounds of SO_2 per 3-hour period with the Jupiter Sulfur SRU/ATS stack.

We also proposed that the flare limits would apply at all times without exception. We also solicited comment on whether it would be appropriate to include in our final FIP the ability to assert an affirmative defense to penalties only (not injunctive relief) for violations of the flare limits. Under the final FIP, flare limits apply at all times. However, we have changed the proposed rule to provide the ability for sources to assert an affirmative defense to penalties only (not injunctive relief) for violations of the flare limits. The affirmative defense provision includes notification requirements that are distinct from the FIP's quarterly reporting requirements.

We proposed that compliance with the flare emission limits would be determined by continuous measurement of the total sulfur concentration and volumetric flow rate of the gas stream to the flare(s), followed by calculation, using appropriate equations, of SO_2 emitted per 3-hour period.

We proposed that sources install, calibrate, maintain, and operate a continuous flow monitoring system capable of measuring the total volumetric flow of the gas stream combusted in a flare in accordance with the specifications described below. We indicated that the flow monitoring system could require one or more flow monitoring devices or flow measurements at one or more header locations if one monitor could not measure all of the volumetric flow to a flare.

We proposed the following volumetric flow monitoring specifications:

(1) The minimum detectible velocity of the flow monitoring device(s) would be 0.1 feet per second (fps);

(2) The device(s) would continuously measure the range of flow rates corresponding to velocities from 0.5 to 275 fps and have a manufacturer's specified accuracy of ± 5% over the range of 1 to 275 fps;

(3) For correcting flow rate to standard conditions (defined as 68°F and 760 millimeters of mercury (mmHg)), temperature and pressure would be monitored continuously;

(4) The temperature and pressure would be monitored in the same location as the flow monitoring device(s) and be calibrated to meet accuracy specifications as follows: Temperature would be calibrated annually to within ± 2.0% at absolute temperature and the pressure monitor would be calibrated annually to within ± 5.0 mmHg;

(5) Flow monitoring device(s) would be calibrated prior to installation to demonstrate accuracy to within 5.0% at flow rates equivalent to 30%, 60%, and 90% of monitor full scale; and

(6) After installation, the flow monitoring devices would be calibrated annually according to manufacturer's specifications.

The final FIP flow monitoring provisions are the same as proposed except that we are revising the following provisions:

(1) With respect to the accuracy of the flow monitor, the final FIP indicates that the device(s) shall continuously measure the range of flow rates corresponding to velocities from 0.5 to 275 fps and have a manufacturer's specified accuracy of ± 5% of the measured flow over the range of 1 to 275 fps and ± 20% of the measured flow over the range of 0.1 to 1.0 fps.

(2) With respect to measurement of volumetric flow rate, the final FIP indicates that volumetric flow rate shall be measured on an actual wet basis and converted to standard conditions, and reported in SCFH.

(3) With respect to temperature and pressure monitors, the final FIP indicates that temperature and pressure monitors should be calibrated prior to installation according to manufacturer's specifications. We inadvertently omitted this requirement in our proposal.

We proposed that in cases where the flow to the flare exceeds the range of the monitor, other methods could be used to determine the volumetric flow rate. In the final FIP, we have clarified this provision to read that in cases when the volumetric flow monitor is not working or where the flow exceeds the range of the monitor, methods established in the flare monitoring plan required by the FIP shall be used to determine the volumetric flow rate to the flare, which shall then be used to calculate SO_2 emissions. Additionally, we have revised the quarterly reporting requirements to be consistent with these changes. The final FIP now indicates that in quarterly reports, sources shall indicate the date and time when a monitor is not working or the range is exceeded, and the other methods used to determine flare emissions. We have made these revisions to the final FIP so that these provisions are consistent with what we require in the flare monitoring plan.

The final FIP also adds the ability for sources to use means other than the flow monitor to determine that the flare is not operating when the flow monitor registers low flow. Specifically, the final FIP allows sources to use devices that monitor the integrity of the flare water seal. If these devices indicate that no flow is going to the flare, yet the flow monitor indicates there is flow, the presumption will be that no flow is going to the flare. We have also revised the flare monitoring plan and reporting requirements to recognize the use of, and require reporting on, these other flare flow devices.

We proposed that sources install, calibrate, maintain, and operate an on-line analyzer system capable of continuously determining the total sulfur concentration of the gas stream sent to a flare. We proposed that the continuous monitoring occur at a location or locations that are representative of the gas combusted in the flare and be capable of measuring the expected range of total sulfur in the gas stream to the flare. We proposed that the total sulfur analyzer be installed, certified (on a concentration basis), and operated in accordance with 40 CFR part 60, Appendix B, Performance Specification 5, and be subject to and meet the quality assurance and quality control requirements (on a concentration basis) of 40 CFR part 60, Appendix F. Additionally, we proposed that sources notify EPA in writing of each Relative Accuracy Test Audit (RATA) a minimum of 25 working days prior to the actual testing. In the final FIP, we are retaining the above provisions, but are allowing the use of other methods to determine total sulfur concentration. See discussion below. The final FIP also clarifies that the total sulfur concentration monitor should measure in the range of concentrations that are normally present in the gas stream to the flare.

In the final FIP, we are adding provisions that indicate that, in cases when the total sulfur analyzer is not working or where the concentration of the total sulfur exceeds the range of the monitor, methods established in the flare monitoring plan required by the FIP shall be used to determine the total sulfur concentrations, which shall than

[14] ATS stands for Ammonium Thiosulfate.

be used to calculate SO_2 emissions. Additionally, the final FIP indicates that in quarterly reports, sources shall indicate the date and time when a monitor is not working, or the range is exceeded, and the other methods used to determine flare emissions. We have made this addition to the FIP so that these provisions are consistent with what we require in the flare monitoring plan.

In lieu of continuous total sulfur concentration analyzers, the final FIP allows sources to determine the total sulfur concentration through grab or integrated sampling. If a source chooses to use one of these methods, the final FIP provides a trigger by which sources must begin the sampling and indicates the analytical methods to be used to determine the total sulfur concentration in the sample. The final FIP also provides that in cases where a grab or integrated sample is not obtained or analyzed, methods established in the flare monitoring plan required by the FIP shall be used to determine total sulfur concentrations, which will then be used to calculate SO_2 emissions. The flare monitoring plan and reporting requirements have also been revised to recognize the potential use of grab or integrated sampling.

We proposed that within 180 days after receiving EPA approval of the flare monitoring plan, sources install and calibrate, and thereafter calibrate, maintain, and operate continuous flow monitors and total sulfur concentration analyzers. The final FIP has been revised to allow sources 365 days after receiving EPA approval of the flare monitoring plan to install and calibrate, and thereafter calibrate, maintain, and operate the continuous volumetric flow monitors and to start determining total sulfur concentrations of the gas stream by either continuous total sulfur concentration analyzers or grab or integrated sampling monitoring.

We proposed that each facility submit a flare monitoring plan including, among other things, information regarding pilot and purge gas at each flare and how the concentration and volumetric flow monitors would analyze the pilot and purge gases. The final FIP indicates that if the facility certifies that only natural gas or an inert gas is used as pilot and/or purge gas, monitoring the stream(s) consisting of only natural gas or inert gas is not required. However, if natural gas or inert gas is not used for pilot and/or purge gas, then the source must measure the flow and H_2S concentration of the gas streams that do not consist of only natural gas or inert gas or use other methods approved by EPA in the flare monitoring plan to estimate flow and H_2S concentration. Pilot and purge gas SO_2 emissions will then be calculated and added to the other SO_2 emissions from the flare to determine compliance with the SO_2 flare emission limits. We have revised the reporting requirements accordingly to require sources to either: (1) Certify in the quarterly reports if pilot and/or purge gas is not monitored because only natural gas or inert gas is used as the pilot and/or purge gas; or (2) report flow, H_2S concentration of, and SO_2 emissions from, the pilot and/or purge gas.

We also added provisions that indicate that in cases when any pilot or purge gas flow monitor or H_2S analyzer is not working, or where the flow or concentration of the H_2S exceeds the range of the monitor or analyzer, methods established in the flare monitoring plan required by the FIP shall be used to determine the pilot and purge gas flow and/or H_2S concentrations, which shall then be used to calculate SO_2 emissions. The FIP indicates that in quarterly reports, sources shall indicate the date and time when a monitor or analyzer is not working, or the range is exceeded, and the other methods used to determine flare emissions.

The flare monitoring plan requirements have been revised to be consistent with the pilot and purge gas provisions described above.

We have added definitions of Aliquot, Integrated sampling, Pilot gas, and Purge gas to clarify the FIP's flare monitoring requirements. Finally, we proposed quarterly reporting requirements similar to the reporting requirements contained in the Billings/Laurel SO_2 SIP and those contained in 40 CFR 60.7(c). We added to the reporting requirements as necessary to address the changes to other requirements.

B. CHS Inc.

1. Flare Requirements

We proposed that CHS Inc.'s flare be limited to 150 pounds of SO_2 per 3-hour period and that compliance with the limit be determined as discussed above. The final FIP is the same as proposed except for the flare monitoring changes applicable to all sources mentioned above.

2. Combustion Sources Emission Limits

We proposed a prohibition in the FIP on the burning of SWS overheads in the main crude heater. We proposed that compliance with the prohibition to not burn SWS overheads in the main crude heater be determined by CHS Inc. installing a chain and lock on the valve that supplies sour water stripper overheads from the ''old'' SWS to the main crude heater to insure that the valve could not be opened. The proposed FIP also required CHS Inc. to maintain the chain and lock in place, keep the valve closed at all times, and log and report any noncompliance with this provision. The final FIP is the same as proposed.

C. ConocoPhillips

Flare Requirements

We proposed that ConocoPhillips's main flare be limited to 150 pounds of SO_2 per 3-hour period and that compliance with the limit be determined as discussed above. We also proposed that at any one time, ConocoPhillips could only use either the north or south main flare. The final FIP is the same as proposed except for the flare monitoring changes applicable to all sources mentioned above.

We proposed an emission limit of 75 pounds of SO_2 per 3-hour period for the Jupiter Sulfur SRU flare and SRU/ATS stack and that emissions could only be vented from the SRU flare when emissions were not being vented from the SRU/ATS stack. We proposed that compliance with the SRU flare emission limit, when Jupiter Sulfur vented emissions to the SRU flare rather than the SRU/ATS stack, be determined by measuring the total sulfur concentration and volumetric flow rate of the gas stream to the flare.[15] Our final FIP is the same as proposed except that we have removed the restriction that emissions could only be vented from the SRU flare when emissions were not being vented from the SRU/ATS stack. Our final FIP indicates that compliance with the combined emission limit be determined by summing the emissions from the Jupiter Sulfur SRU flare and SRU/ATS stack.

D. ExxonMobil

1. Flare Requirements

We proposed that ExxonMobil's primary process and turnaround flares be limited to 150 pounds of SO_2 per 3-hour period and that compliance with the limit be determined as discussed above. Our proposal indicated that we understood that the turnaround flare is only used about 30–40 days every 5 to 6 years and is not normally operating. Therefore, we proposed to establish one combined emission limit for the primary process and turnaround flares. Our

[15] Note that the SRU/ATS stack has an SO_2 CEMS and flow monitor to determine compliance when emissions are vented through that stack.

assumption was that the flow and concentration monitoring devices installed to measure the gas stream to the primary process flare would also be able to measure the gas stream to the turnaround flare. However, we indicated that if that was not the case, ExxonMobil could propose another method to determine emissions from the turnaround flare. The final FIP is the same as proposed except for the flare monitoring changes applicable to all sources mentioned above.

2. Compliance Monitoring of Refinery Fuel Gas Combustion Emission Limits

We proposed a method for measuring the H_2S concentrations in the refinery fuel gas when the H_2S concentrations in the refinery fuel gas exceed the range of the H_2S CEMS. The method we proposed is identical to the method included in CHS Inc.'s 1998 exhibit.[16]

Specifically, we proposed that within four hours of the initial determination that the H_2S concentrations in the refinery fuel gas stream exceed the upper range of the H_2S CEMS, ExxonMobil would have to initiate sampling of the refinery fuel gas stream at the fuel header on a once-per-3-hour-period frequency using the Tutwiler method in 40 CFR 60.648. The Tutwiler method determines the H_2S concentration in the refinery fuel gas. We also proposed that the Tutwiler-derived H_2S refinery fuel gas concentration be used in calculations to determine the hourly, 3-hour, and 24-hour SO_2 emission rates, in pounds, from refinery fuel gas combustion. These emission rates would then be used to determine compliance with the refinery fuel gas combustion emission limits in ExxonMobil's 1998 and 2000 exhibits when the H_2S concentrations in the refinery fuel gas stream exceeded the upper range of the H_2S CEMS.[17]

In our final FIP we have revised the method by which ExxonMobil shall obtain the H_2S concentration of the refinery fuel gas when the H_2S concentrations in the refinery fuel gas exceed the range of the H_2S CEMS. Specifically, our final FIP indicates that within four hours after the H_2S CEMS measures an H_2S concentration in the fuel gas stream greater than 1200 ppmv, ExxonMobil shall initiate sampling of the fuel gas stream at the fuel header on a once-per-hour-period frequency using length-of-stain detector tubes with the appropriate sample tube range. If the results exceed the tube's range, another tube of a higher range must be used until results are in the tube's range. ExxonMobil shall continue to use the length-of-stain detector tube method at this frequency until the H_2S CEMS measures an H_2S concentration in the fuel gas stream equal to or less than 1200 ppmv continuously over a 3-hour period. We also revised the equation used to calculate the SO_2 emissions because of the change in the H_2S analysis method.

We proposed reporting requirements similar to the requirements adopted by the State for CHS Inc. and those contained in 40 CFR 60.7(c). We added a provision that requires ExxonMobil to report information for periods when the range of the refinery fuel gas CEMS is exceeded.

3. Compliance Monitoring of Coker CO Boiler Emission Limits

We proposed that existing SO_2 and flow CEMS, in conjunction with the appropriate calculations mentioned below, be used to determine compliance with the emission limits established in section 3(B)(1) of ExxonMobil's 2000 exhibit. Specifically, we proposed that at all times ExxonMobil operate and maintain CEMS to measure SO_2 concentrations from the Coker CO Boiler stack and a continuous stack flow rate monitor to measure stack gas flow rates from the Coker CO Boiler stack. We proposed that the SO_2 and flow rate CEMS meet the CEM Performance Specifications contained in sections 6(C) and (D), respectively, of ExxonMobil's 1998 exhibit, except that ExxonMobil would have to notify EPA in writing of each annual RATA a minimum of 25 working days prior to actual testing.

Our final FIP is the same as proposed except that we have deleted the requirement that the flow and SO_2 CEMS be operated at all times and added the requirement that whenever ExxonMobil's Coker unit is operating and Coker unit flue gases are exhausted through the Coker CO Boiler stack, the flow and SO_2 CEMS shall be immediately operational. We have also clarified that ExxonMobil shall meet the specifications contained in section 6(C) of ExxonMobil's 1998 exhibit, except that ExxonMobil shall perform a Cylinder Gas Audit (CGA) or Relative Accuracy Audit (RAA) which meets the requirements of 40 CFR part 60, Appendix F, within eight hours of when the Coker unit flue gases begin exhausting through the Coker CO Boiler stack and that ExxonMobil shall perform an annual RATA on the flow and SO_2 CEMS.

We proposed that compliance with ExxonMobil's Coker CO Boiler emission limits[18] be determined using the data from the CEMS mentioned above and in accordance with the appropriate calculations described in ExxonMobil's 1998 exhibit.[19] We also proposed reporting requirements similar to the requirements adopted in the Billings/Laurel SO_2 SIP and those contained in 40 CFR 60.7(c). Our final FIP is the same as proposed, except as noted above.

E. Montana Sulphur & Chemical Company (MSCC)

1. Flare Requirements

We proposed that MSCC's 80-foot west flare, 125-foot east flare, and 100-meter flare be limited to 150 pounds of SO_2 per 3-hour period combined total and that compliance with the limit be determined as discussed above. Our final FIP is the same as proposed except for the flare monitoring changes applicable to all sources mentioned above.

2. SRU 100-Meter Stack

We proposed the following emission limits for the SRU 100-meter stack: Emissions of SO_2 not to exceed (a) 3,003.1 pounds per 3-hour period, (b) 24,025.0 pounds per calendar day, and (c) 9,088,000.0 pounds per calendar year. Our final FIP is the same as proposed except that the 3-hour and calendar day emission limits have been slightly reduced due to minor corrections in the modeling. The final FIP emission limits for the SRU 100-meter stack are as follows: Emissions of SO_2 shall not exceed (a) 2981.7 pounds per 3-hour period, (b) 23,853.6 pounds per calendar day, and (c) 9,088,000.0 pounds per calendar year

We proposed that compliance with the above emission limits be determined according to the methods established in MSCC's 1998 exhibit. Finally, we proposed quarterly reporting requirements similar to the reporting requirements contained in the Billings/Laurel SO_2 SIP and those contained in 40 CFR 60.7(c). Our final FIP is the same as proposed, except as noted above.

3. SRU 30-Meter Stack

We proposed the following mass emission limits for the 30-meter stack: Emissions of SO_2 not to exceed: (a) 12.0 pounds per 3-hour period, (b) 96.0

[16] See section 6(B)(3) of CHS Inc.'s 1998 exhibit. (See reference document DD for a copy of the exhibit.)

[17] See sections 3(A)(1) and 3(B)(2) of ExxonMobil's 1998 and 2000 exhibits. (See reference documents GG and HH for copies of the exhibits.)

[18] See section 3(B)(1) of ExxonMobil's 2000. (*See* reference document HH for a copy of the exhibit.)

[19] See sections 2(A)(1), (8), (11)(a), and (16) of ExxonMobil's 1998 exhibit. (*See* reference document GG for a copy of the exhibit.)

pounds per calendar day, and (c) 35,040 pounds per calendar year. The mass emission limits remain the same as proposed.

We proposed that H_2S concentrations in the fuel burned in the boilers and heaters, while any boiler or heater was exhausting through the SRU 30-meter stack, be limited to 100 ppm of H_2S or less, averaged over a 3-hour period. While we proposed the foregoing approach for determining compliance with the SRU 30-meter stack emission limits, we also solicited input on whether we should promulgate a different compliance determining method.

In our final FIP, we are keeping the simplified method to determine compliance with mass emission limits. However, we are increasing the H_2S concentration limit to 160 ppm/3-hour period and adding a calendar day H_2S concentration limit of 100 ppm.

We proposed that the H_2S concentration in the fuel be measured using a portable H_2S monitor. In our final FIP, we have revised the method by which MSCC shall determine the H_2S content of the fuel burned. Specifically, our final FIP indicates that MSCC shall determine the H_2S content of the fuel burned using length-of-stain detector tubes with the appropriate sample tube range. The final FIP indicates that if the results exceed the tube's range, another tube of a higher range must be used until results are in the tube's range.

Finally, we proposed quarterly reporting requirements. The quarterly reporting requirements are similar to the reporting requirements contained in the Billings/Laurel SO_2 SIP and those contained in 40 CFR 60.7(c). Our final FIP is the same as proposed, except as needed to address the changes noted above.

4. Combined SO_2 Emission Limit From the Auxiliary Vent Stacks

We proposed the following mass emission limits for the auxiliary vent stacks: emissions of SO_2 not to exceed: (a) 12.0 pounds per 3-hour period, (b) 96.0 pounds per calendar day, and (c) 35,040 pounds per calendar year. The mass emission limits remain the same as proposed. In our proposal, we indicated that the issues associated with monitoring compliance with these limits were essentially the same as those associated with monitoring compliance with the SRU 30-meter stack emission limits. Thus, we proposed the same approach for monitoring compliance with these emission limits as we describe in section III.E.3, above. Similarly, we solicited input on whether we should promulgate a different compliance determining method.

In our final FIP, we are keeping the simplified method to determine compliance with mass emission limits. However, we are increasing the H_2S concentration limit to 160 ppm/3-hour period and adding a calendar day H_2S concentration limit of 100 ppm.

We proposed that the H_2S concentration in the fuel be measured using a portable H_2S monitor. In our final FIP we have revised the method by which MSCC shall determine the H_2S content of the fuel burned. Specifically, our final FIP indicates that MSCC shall determine the H_2S content of the fuel burned using length-of-stain detector tubes with the appropriate sample tube range. The final FIP indicates that if the results exceed the tube's range, another tube of a higher range must be used until results are in the tube's range.

Finally, we proposed quarterly reporting requirements similar to reporting requirements contained in the Billings/Laurel SO_2 SIP and those contained in 40 CFR 60.7(c). Our final FIP is the same as proposed, except as noted above.

F. Modeling To Support Emission Limits

Our proposal discussed the modeling conducted to support the emission limits proposed for MSCC's SRU 100-meter stack. EPA received comments regarding our modeling files that identified the need for minor technical corrections to those files. In response to several of these comments, EPA has revised its modeling files, as necessary, to omit extraneous information, add information that was inadvertently omitted, make minor corrections, or otherwise clarify the files. EPA does not consider any of the revisions to be significant. The only change with any substantive impact—the correction to the coordinates for MSCC described below—results in a very slight decrease in our proposed emission limit for MSCC's 100-meter stack from 126.13 g/second to125.23 g/second, less than a 1 percent change. The specific changes EPA has made are as follows:

(1) A commenter recommended that the modeling files contain a more complete description of the naming convention and purpose behind each modeling effort.

EPA changes: To improve documentation, some extraneous modeling files have been removed and a text file added to explain the naming conventions. The naming conventions, typically used by modelers, help define the purpose behind each modeling effort.

(2) One commenter indicated that only proper geographical coordinates should be used as inputs to the dispersion modeling. Commenters indicated that the location of the small boiler stacks at MSCC that were modeled as volume sources was incorrect.

EPA changes: We have corrected the incorrect source coordinate for MSCC's boiler stacks in the modeling files.

(3) One commenter indicated that three source input files were not included in reference document EEE.

EPA change: We have added the three source input files to the compact disk containing the modeling files.

(4) One commenter indicated that a source input file (*ref-5t.sri*) was included in reference document EEE but did not appear to be used in any input and output files.

EPA change: This was a test file that we inadvertently included and have now deleted.

On July 13, 2007, the revised modeling files were indexed in the electronic docket contained on *http://www.regulations.gov* and a compact disk containing the modeling files was placed in the docket for this action. See reference document FFFFF.

Also, as noted above, with respect to the 30-meter stack and auxiliary vent stacks, we are keeping the simplified method to determine compliance with the mass emission limits. However, we are increasing the H_2S concentration limit to 160 ppm/3-hour period and adding a calendar day H_2S concentration limit of 100 ppm. The mass emission limits remain the same as proposed.

We remodeled the area assuming the emissions were 1.01 g/s from the 30-meter stack and auxiliary vent stacks. We derived the higher emission value from the same assumptions and calculations expressed in our proposal, except we assumed a maximum H_2S concentration of 160 ppm (see 71 FR 39259, 39268, July 12, 2006). At the higher 3-hour emissions, the area would still show attainment of the 3-hour SO_2 NAAQS. However, the area would not show attainment of the 24-hour SO_2 NAAQS if all 8 3-hour periods in a calendar day were at the 160 ppm level. Therefore, we are revising the FIP to indicate that the H_2S concentration in the fuel burned in the heaters and boilers, while any of the heaters and boilers are exhausting to the SRU 30-meter stack or auxiliary vents stacks, shall not exceed 160 ppm per 3-hour period and 100 ppm per calendar day. The revised modeling files are indexed in the electronic docket contained on *http://www.regulations.gov,* and a

compact disk containing the modeling files was placed in the docket for this action. See reference document KKKKKK.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866, 58 FR 51735 (October 4, 1993), all ''regulatory actions'' that are ''significant'' are subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. A ''regulatory action'' is defined as ''any substantive action by an agency (normally published in the **Federal Register**) that promulgates or is expected to result in the promulgation of a final rule or regulation, including * * * notices of proposed rulemaking.'' A ''regulation or rule'' is defined as ''an agency statement of general applicability and future effect, * * * ''

The FIP is not subject to OMB review under E.O. 12866 because it applies to only four specifically named facilities, with requirements unique to each facility, and is, therefore, not a rule of general applicability. Thus, it is not a ''regulatory action'' under E.O. 12866 and was not submitted to OMB for review.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b). Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, OMB must approve all ''collections of information'' by EPA. The Act defines ''collection of information'' as a requirement for ''answers to * * * identical reporting or recordkeeping requirements imposed on ten or more persons * * * '' 4 U.S.C. 3502(3)(A). Because the FIP only applies to four companies, the Paperwork Reduction Act does not apply.

C. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. section 601 *et seq.,* EPA generally must prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless EPA certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. 5 U.S.C. 603, 604, and 605(b).

This FIP will not have a significant economic impact on a substantial number of small entities because this FIP applies to only four sources (CHS Inc., ConocoPhillips, ExxonMobil and MSCC) in the Billings/Laurel, Montana area. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995, Public Law 04 4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of UMRA, EPA generally must prepare a written statement, including a cost benefit analysis, for proposed rules and for final rules with ''Federal mandates'' that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. 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 might significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in the expenditure of $100 million for State, local and tribal governments, in the aggregate, or the private sector in any one year. The FIP does not impose any enforceable duties on state, local, or tribal governments. Although the FIP would impose enforceable duties on entities in the private sector, the costs are expected to be less than $100 million in any one year. Thus, today's rule is not subject to the requirements of 202 and 205 of the UMRA.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments, because it imposes no requirements on small governments. Nor will the rule impact small governments in any significant or unique way. Thus, today's rule is not subject to the requirements of section 203 of the UMRA.

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'' include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

The final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule establishes standards appropriate for four companies in the Billings/Laurel, Montana area, and, thus, does not directly affect any State or local government. It does not alter the relationship or the distribution of power and responsibilities established by the Clean Air Act. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This 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 as specified in Executive Order 13175. This Action does not involve or impose any requirements that affect Indian Tribes. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This FIP is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866. Further, EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This FIP is not subject to Executive Order 13045 because it implements a previously promulgated health and safety-based Federal standard.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

As noted in the proposed rule, Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995, Public Law No. 104–113 (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards (VCS) are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary standards.

This rulemaking involves technical standards. We have identified three VCS that can be used in lieu of EPA methods. The American Society for Testing and Materials (ASTM) Methods D4468–85 (Reapproved 2000) and D5504–01 (Reapproved 2006) are acceptable methods for determining total sulfur concentrations in the gas streams going to facility flares in lieu of using a continuous total sulfur analyzer in accordance with 40 CFR part 60, Appendix B, Performance Specification 5. ASTM Method D4810–06 is an acceptable method for determining the hydrogen sulfide concentration in ExxonMobil's refinery fuel gas in lieu of using the Tutwiler method described in 40 CFR 60.648. We are incorporating these methods by reference in 40 CFR 52.1392(j).

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 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 increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. This final rule establishes emission limits and compliance determining methods at four sources in the Billings/Laurel, Montana area to assure that the SO_2 NAAQS are met.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. section 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. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability; it only applies to four specifically named sources, with requirements unique to each facility.

L. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 20, 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 CAA section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: March 28, 2008.

Stephen L. Johnson,

Administrator.

■ For reasons stated in the preamble, 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 BB—Montana

■ 2. Subpart BB is amended by adding § 52.1392 to read as follows:

§ 52.1392 Federal Implementation Plan for the Billings/Laurel Area.

(a) *Applicability.* This section applies to the owner(s) or operator(s), including any new owner(s) or operator(s) in the

event of a change in ownership or operation, of the following facilities in the Billings/Laurel, Montana area: CHS Inc. Petroleum Refinery, Laurel Refinery, 803 Highway 212 South, Laurel, MT; ConocoPhillips Petroleum Refinery, Billings Refinery, 401 South 23rd St., Billings, MT; ExxonMobil Petroleum Refinery, 700 Exxon Road, Billings, MT; and Montana Sulphur & Chemical Company, 627 Exxon Road, Billings, MT.

(b) *Scope.* The facilities listed in paragraph (a) of this section are also subject to the Billings/Laurel SO_2 SIP, as approved at 40 CFR 52.1370(c)(46) and (52). In cases where the provisions of this FIP address emissions activities differently or establish a different requirement than the provisions of the approved SIP, the provisions of this FIP take precedence.

(c) *Definitions.* For the purpose of this section, we are defining certain words or initials as described in this paragraph. Terms not defined below that are defined in the Clean Air Act or regulations implementing the Clean Air Act, shall have the meaning set forth in the Clean Air Act or such regulations.

(1) *Aliquot* means a fractional part of a sample that is an exact divisor of the whole sample.

(2) *Annual Emissions* means the amount of SO_2 emitted in a calendar year, expressed in pounds per year rounded to the nearest pound, where:

Annual emissions = Σ Daily emissions within the calendar year.

(3) *Calendar Day* means a 24-hour period starting at 12 midnight and ending at 12 midnight, 24 hours later.

(4) *Clock Hour* means a twenty-fourth (1/24) of a calendar day; specifically any of the standard 60-minute periods in a day that are identified and separated on a clock by the whole numbers one (1) through 12.

(5) *Continuous Emission Monitoring System or CEMS* means all continuous concentration and volumetric flow rate monitors, associated data acquisition equipment, and all other equipment necessary to meet the requirements of this section for continuous monitoring.

(6) *Daily Emissions* means the amount of SO_2 emitted in a calendar day, expressed in pounds per day rounded to the nearest tenth (1/10) of a pound, where:

Daily emissions = Σ 3-hour emissions within a calendar day.

(7) *EPA* means the United States Environmental Protection Agency.

(8) *Exhibit* means for a given facility named in paragraph (a) of this section, exhibit A to the stipulation of the Montana Department of Environmental Quality and that facility, adopted by the Montana Board of Environmental Review on either June 12, 1998, or March 17, 2000.

(9) *1998 Exhibit* means for a given facility named in paragraph (a) of this section, the exhibit adopted by the Montana Board of Environmental Review on June 12, 1998.

(10) *2000 Exhibit* means for a given facility named in paragraph (a) of this section, the exhibit adopted by the Montana Board of Environmental Review on March 17, 2000.

(11) *Flare* means a combustion device that uses an open flame to burn combustible gases with combustion air provided by uncontrolled ambient air around the flame. This term includes both ground and elevated flares.

(12) The initials *Hg* mean mercury.

(13) *Hourly* means or refers to each clock hour in a calendar day.

(14) *Hourly Average* means an arithmetic average of all valid and complete 15-minute data blocks in a clock hour. Four (4) valid and complete 15-minute data blocks are required to determine an hourly average for each CEMS per clock hour.

Exclusive of the above definition, an hourly CEMS average may be determined with two (2) valid and complete 15-minute data blocks, for two (2) of the 24 hours in any calendar day. A complete 15-minute data block for each CEMS shall have a minimum of one (1) data point value; however, each CEMS shall be operated such that all valid data points acquired in any 15-minute block shall be used to determine the 15-minute block's reported concentration and flow rate.

(15) *Hourly Emissions* means the pounds per clock hour of SO_2 emissions from a source (including, but not limited to, a flare, stack, fuel oil system, sour water system, or fuel gas system) determined using hourly averages and rounded to the nearest tenth (1/10) of a pound.

(16) The initials H_2S mean hydrogen sulfide.

(17) *Integrated sampling* means an automated method of obtaining a sample from the gas stream to the flare that produces a composite sample of individual aliquots taken over time.

(18) The initials *MBER* mean the Montana Board of Environmental Review.

(19) The initials *MDEQ* mean the Montana Department of Environmental Quality.

(20) The initials *mm* mean millimeters.

(21) The initials *MSCC* mean the Montana Sulphur & Chemical Company.

(22) *Pilot gas* means the gas used to maintain the presence of a flame for ignition of gases routed to a flare.

(23) *Purge gas* means a continuous gas stream introduced into a flare header, flare stack, and/or flare tip for the purpose of maintaining a positive flow that prevents the formation of an explosive mixture due to ambient air ingress.

(24) The initials *ppm* mean parts per million.

(25) The initials *SCFH* mean standard cubic feet per hour.

(26) The initials *SCFM* mean standard cubic feet per minute.

(27) *Standard Conditions* means (a) 20 °C (293.2 °K, 527.7 °R, or 68.0 °F) and one (1) atmosphere pressure (29.92 inches Hg or 760 mm Hg) for stack and flare gas emission calculations, and (b) 15.6 °C (288.7 °K, 520.0 °R, or 60.3 °F) and one (1) atmosphere pressure (29.92 inches Hg or 760 mm Hg) for refinery fuel gas emission calculations.

(28) The initials SO_2 mean sulfur dioxide.

(29) The initials *SWS* mean sour water stripper.

(30) The term *3-hour emissions* means the amount of SO_2 emitted in each of the eight (8) non-overlapping 3-hour periods in a calendar day, expressed in pounds and rounded to the nearest tenth (1/10) of a pound, where:

3 hour emissions = Σ Hourly emissions within the 3-hour period.

(31) The term *3-hour period* means any of the eight (8) non-overlapping 3-hour periods in a calendar day: Midnight to 3 a.m., 3 a.m. to 6 a.m., 6 a.m. to 9 a.m., 9 a.m. to noon, noon to 3 p.m., 3 p.m. to 6 p.m., 6 p.m. to 9 p.m., 9 p.m. to midnight.

(32) *Turnaround* means a planned activity involving shutdown and startup of one or several process units for the purpose of performing periodic maintenance, repair, replacement of equipment, or installation of new equipment.

(33) *Valid* means data that are obtained from a monitor or meter serving as a component of a CEMS which meets the applicable specifications, operating requirements, and quality assurance and control requirements of section 6 of ConocoPhillips', CHS Inc.'s, ExxonMobil's, and MSCC's 1998 exhibits, respectively, and this section.

(d) *CHS Inc. emission limits and compliance determining methods.*

(1) *Introduction.* The provisions for CHS Inc. cover the following units:

(i) The flare.

(ii) Combustion sources, which consist of those sources identified in the

combustion sources emission limit in section 3(A)(1)(d) of CHS Inc.'s 1998 exhibit.

(2) *Flare requirements.*

(i) *Emission limit.* The total emissions of SO_2 from the flare shall not exceed 150.0 pounds per 3-hour period.

(ii) *Compliance determining method.* Compliance with the emission limit in paragraph (d)(2)(i) of this section shall be determined in accordance with paragraph (h) of this section.

(3) *Combustion sources.*

(i) *Restrictions.* Sour water stripper overheads (ammonia (NH_3) and H_2S gases removed from the sour water in the sour water stripper) shall not be burned in the main crude heater. At all times, CHS Inc. shall keep a chain and lock on the valve that supplies sour water stripper overheads from the old sour water stripper to the main crude heater and shall keep such valve closed.

(ii) *Compliance determining method.* CHS Inc. shall log and report any noncompliance with the requirements of paragraph (d)(3)(i) of this section.

(4) *Data reporting requirements.*

(i) CHS Inc. shall submit quarterly reports beginning with the first calendar quarter following May 21, 2008. The quarterly reports shall be submitted within 30 days of the end of each calendar quarter. The quarterly reports shall be submitted to EPA at the following address: Air Program Contact, EPA Montana Operations Office, Federal Building, 10 West 15th Street, Suite 3200, Helena, MT 59626.

The quarterly report shall be certified for accuracy in writing by a responsible CHS Inc. official. The quarterly report shall consist of both a comprehensive electronic-magnetic report and a written hard copy data summary report.

(ii) The electronic report shall be on magnetic or optical media, and such submittal shall follow the reporting format of electronic data being submitted to the MDEQ. EPA may modify the reporting format delineated in this section, and, thereafter, CHS Inc. shall follow the revised format. In addition to submitting the electronic quarterly reports to EPA, CHS Inc. shall also record, organize, and archive for at least five (5) years the same data, and upon request by EPA, CHS Inc. shall provide EPA with any data archived in accordance with this provision. The electronic report shall contain the following:

(A) Hourly average total sulfur concentrations as H_2S or SO_2 in ppm in the gas stream to the flare;

(B) Hourly average H_2S concentrations of the flare pilot and purge gases in ppm;

(C) Hourly average volumetric flow rates in SCFH of the gas stream to the flare;

(D) Hourly average volumetric flow rates in SCFH of the flare pilot and purge gases;

(E) Hourly average temperature (in °F) and pressure (in mm or inches of Hg) of the gas stream to the flare;

(F) Hourly emissions from the flare in pounds per clock hour; and

(G) Daily calibration data for all flare, pilot gas, and purge gas CEMS.

(iii) The quarterly written report shall contain the following information:

(A) The 3-hour emissions in pounds per 3-hour period from each flare;

(B) Periods in which only natural gas or an inert gas was used as flare pilot gas or purge gas or both;

(C) The results of all quarterly Cylinder Gas Audits (CGA), Relative Accuracy Audits (RAA), and annual Relative Accuracy Test Audits (RATA) for all total sulfur analyzer(s) and H_2S analyzer(s), and the results of all annual calibrations and verifications for the volumetric flow, temperature, and pressure monitors;

(D) For all periods of flare volumetric flow rate monitoring system or total sulfur analyzer system downtime, flare pilot gas or purge gas volumetric flow or H_2S analyzer system downtime, or failure to obtain or analyze a grab or integrated sample, the written report shall identify:

(*1*) Dates and times of downtime or failure;

(*2*) Reasons for downtime or failure;

(*3*) Corrective actions taken to mitigate downtime or failure; and

(*4*) The other methods, approved by EPA in the flare monitoring plan required by paragraph (h)(5) of this section, used to determine flare emissions;

(E) For all periods that the range of the flare or any pilot or purge gas volumetric flow rate monitor(s), any flare total sulfur analyzer(s), or any pilot or purge gas H_2S analyzer(s) is exceeded, the written report shall identify:

(*1*) Date and time when the range of the volumetric flow monitor(s), total sulfur analyzer(s), or H_2S analyzer(s) was exceeded; and

(*2*) The other methods, approved by EPA in the flare monitoring plan required by paragraph (h)(5) of this section, used to determine flare emissions;

(F) For all periods that the flare volumetric flow monitor or monitors are recording flow, yet any Flare Water Seal Monitoring Device indicates there is no flow, the written report shall identify:

(*1*) Date, time, and duration when the flare volumetric flow monitor(s) recorded flow, yet any Flare Water Seal Monitoring Device indicated there was no flow;

(G) For each 3-hour period in which the flare emission limit is exceeded, the written report shall identify:

(*1*) The date, start time, and end time of the excess emissions;

(*2*) Total hours of operation with excess emissions, the hourly emissions, and the 3-hour emissions;

(*3*) All information regarding reasons for operating with excess emissions; and

(*4*) Corrective actions taken to mitigate excess emissions;

(H) The date and time of any noncompliance with the requirements of paragraph (d)(3)(i) of this section; and

(I) When no excess emissions have occurred or the continuous monitoring system(s) or manual system(s) have not been inoperative, repaired, or adjusted, such information shall be stated in the report.

(e) *ConocoPhillips emission limits and compliance determining methods.*

(1) *Introduction.* The provisions for ConocoPhillips cover the following units:

(i) The main flare, which consists of two flares—the north flare and the south flare—that are operated on alternating schedules. These flares are referred to herein as the north main flare and south main flare, or generically as the main flare.

(ii) The Jupiter Sulfur SRU flare, which is the flare at Jupiter Sulfur, ConocoPhillips' sulfur recovery unit.

(2) *Flare requirements.*

(i) *Emission limits.*

(A) Combined emissions of SO_2 from the main flare (which can be emitted from either the north or south main flare, but not both at the same time) shall not exceed 150.0 pounds per 3-hour period.

(B) Emissions of SO_2 from the Jupiter Sulfur SRU flare and the Jupiter Sulfur SRU/ATS stack (also referred to as the Jupiter Sulfur SRU stack) shall not exceed 75.0 pounds per 3-hour period, 600.0 pounds per calendar day, and 219,000 pounds per calendar year.

(ii) *Compliance determining method.*

(A) Compliance with the emission limit in paragraph (e)(2)(i)(A) of this section shall be determined in accordance with paragraph (h) of this section. In the event that a single monitoring location cannot be used for both the north and south main flare, ConocoPhillips shall monitor the flow and measure the total sulfur concentration at more than one location in order to determine compliance with the main flare emission limit. ConocoPhillips shall log and report any instances when emissions are vented

from the north main flare and south main flare simultaneously.

(B) Compliance with the emission limits and requirements in paragraph (e)(2)(i)(B) of this section shall be determined by summing the emissions from the Jupiter Sulfur SRU flare and SRU/ATS stack. Emissions from the Jupiter Sulfur SRU flare shall be determined in accordance with paragraph (h) of this section and the emissions from the Jupiter Sulfur SRU/ATS stack shall be determined pursuant to ConocoPhillips' 1998 exhibit (see section 4(A) of the exhibit).

(3) *Data reporting requirements.*

(i) ConocoPhillips shall submit quarterly reports on a calendar year basis, beginning with the first calendar quarter following May 21, 2008. The quarterly reports shall be submitted within 30 days of the end of each calendar quarter. The quarterly reports shall be submitted to EPA at the following address: Air Program Contact, EPA Montana Operations Office, Federal Building, 10 West 15th Street, Suite 3200, Helena, MT 59626.

The quarterly report shall be certified for accuracy in writing by a responsible ConocoPhillips official. The quarterly report shall consist of both a comprehensive electronic-magnetic report and a written hard copy data summary report.

(ii) The electronic report shall be on magnetic or optical media, and such submittal shall follow the reporting format of electronic data being submitted to the MDEQ. EPA may modify the reporting format delineated in this section, and, thereafter, ConocoPhillips shall follow the revised format. In addition to submitting the electronic quarterly reports to EPA, ConocoPhillips shall also record, organize, and archive for at least five (5) years the same data, and upon request by EPA, ConocoPhillips shall provide EPA with any data archived in accordance with this provision. The electronic report shall contain the following:

(A) Hourly average total sulfur concentrations as H_2S or SO_2 in ppm in the gas stream to the ConocoPhillips main flare and Jupiter Sulfur SRU flare;

(B) Hourly average H_2S concentrations of the ConocoPhillips main flare and Jupiter Sulfur SRU flare pilot and purge gases in ppm;

(C) Hourly average volumetric flow rates in SCFH of the gas streams to the ConocoPhillips main flare and Jupiter Sulfur SRU flare;

(D) Hourly average volumetric flow rates in SCFH of the ConocoPhillips main flare and Jupiter Sulfur SRU flare pilot and purge gases;

(E) Hourly average temperature (in °F) and pressure (in mm or inches of Hg) of the gas streams to the ConocoPhillips main flare and Jupiter Sulfur SRU flare;

(F) Hourly emissions in pounds per clock hour from the ConocoPhillips main flare and Jupiter Sulfur SRU flare; and

(G) Daily calibration data for all flare, pilot gas, and purge gas CEMS.

(iii) The quarterly written report shall contain the following information:

(A) The 3-hour emissions in pounds per 3-hour period from the ConocoPhillips main flare and the sum of the combined 3-hour emissions from the Jupiter Sulfur SRU/ATS stack and Jupiter Sulfur SRU flare in pounds per 3-hour period;

(B) Periods in which only natural gas or an inert gas was used as flare pilot gas or purge gas or both;

(C) The results of all quarterly Cylinder Gas Audits (CGA), Relative Accuracy Audits (RAA), and annual Relative Accuracy Test Audits (RATA) for all total sulfur analyzer(s) and H_2S analyzer(s), and the results of all annual calibrations and verifications for the volumetric flow, temperature, and pressure monitors;

(D) For all periods of flare volumetric flow rate monitoring system or total sulfur analyzer system downtime, flare pilot gas or purge gas volumetric flow or H_2S analyzer system downtime, or failure to obtain or analyze a grab or integrated sample, the written report shall identify:

(*1*) Dates and times of downtime or failure;

(*2*) Reasons for downtime or failure;

(*3*) Corrective actions taken to mitigate downtime or failure; and

(*4*) The other methods, approved by EPA in the flare monitoring plan required by paragraph (h)(5) of this section, used to determine flare emissions;

(E) For all periods that the range of the flare or any pilot or purge gas volumetric flow rate monitor(s), any flare total sulfur analyzer(s), or any pilot or purge gas H_2S analyzer(s) is exceeded, the written report shall identify:

(*1*) Date and time when the range of the volumetric flow monitor(s), total sulfur analyzer(s), or H_2S analyzer(s) was exceeded, and

(*2*) The other methods, approved by EPA in the flare monitoring plan required by paragraph (h)(5) of this section, used to determine flare emissions;

(F) For all periods that the flare volumetric flow monitor or monitors are recording flow, yet any Flare Water Seal Monitoring Device indicates there is no flow, the written report shall identify:

(*1*) Date, time, and duration when the flare volumetric flow monitor(s) recorded flow, yet any Flare Water Seal Monitoring Device indicated there was no flow;

(G) Identification of dates, times, and duration of any instances when emissions were vented from the north and south main flares simultaneously;

(H) For each 3-hour period in which a flare emission limit is exceeded, the written report shall identify:

(*1*) The date, start time, and end time of the excess emissions;

(*2*) Total hours of operation with excess emissions, the hourly emissions, and the 3-hour emissions;

(*3*) All information regarding reasons for operating with excess emissions; and

(*4*) Corrective actions taken to mitigate excess emissions; and

(I) When no excess emissions have occurred or the continuous monitoring system(s) or manual system(s) have not been inoperative, repaired, or adjusted, such information shall be stated in the report.

(f) *ExxonMobil emission limits and compliance determining methods.*

(1) *Introduction.* The provisions for ExxonMobil cover the following units:

(i) The Primary process flare and the Turnaround flare. The Primary process flare is the flare normally used by ExxonMobil. The Turnaround flare is the flare ExxonMobil uses for about 30 to 40 days every 5 to 6 years when the facility's major SO_2 source, the fluid catalytic cracking unit, is not normally operating.

(ii) The following refinery fuel gas combustion units: The FCC CO Boiler, F–2 crude/vacuum heater, F–3 unit, F–3X unit, F–5 unit, F–700 unit, F–201 unit, F–202 unit, F–402 unit, F–551 unit, F–651 unit, standby boiler house (B–8 boiler), and Coker CO Boiler (only when the Yellowstone Energy Limited Partnership (YELP) facility is receiving ExxonMobil Coker unit flue gas or whenever the ExxonMobil Coker is not operating).

(iii) Coker CO Boiler stack.

(2) *Flare requirements.*

(i) *Emission limit.* The total combined emissions of SO_2 from the Primary process and Turnaround refinery flares shall not exceed 150.0 pounds per 3-hour period.

(ii) *Compliance determining method.* Compliance with the emission limit in paragraph (f)(2)(i) of this section shall be determined in accordance with paragraph (h) of this section. If volumetric flow monitoring device(s) installed and concentration monitoring methods used to measure the gas stream

to the Primary Process flare cannot measure the gas stream to the Turnaround flare, ExxonMobil may apply to EPA for alternative measures to determine the volumetric flow rate and total sulfur concentration of the gas stream to the Turnaround flare. Before EPA will approve such alternative measures, ExxonMobil must agree that the Turnaround flare will be used only during refinery turnarounds of limited duration and frequency—no more than 60 days once every five (5) years—which restriction shall be considered an enforceable part of this FIP. Such alternative measures may consist of reliable flow estimation parameters to estimate volumetric flow rate and manual sampling of the gas stream to the flare to determine total sulfur concentrations, or such other measures that EPA finds will provide accurate estimations of SO_2 emissions from the Turnaround flare.

(3) *Refinery fuel gas combustion requirements.*

(i) *Emission limits.* The applicable emission limits are contained in section 3(A)(1) of ExxonMobil's 2000 exhibit and section 3(B)(2) of ExxonMobil's 1998 exhibit.

(ii) *Compliance determining method.* For the limits referenced in paragraph (f)(3)(i) of this section, the compliance determining methods specified in section 4(B) of ExxonMobil's 1998 exhibit shall be followed except when the H_2S concentration in the refinery fuel gas stream exceeds 1200 ppmv as measured by the H_2S CEMS required by section 6(B)(3) of ExxonMobil's 1998 exhibit (the H_2S CEMS.) When such value is exceeded, the following compliance monitoring method shall be employed:

(A) ExxonMobil shall measure the H_2S concentration in the refinery fuel gas according to the procedures in paragraph (f)(3)(ii)(B) of this section and calculate the emissions according to the equations in paragraph (f)(3)(ii)(C) of this section.

(B) Within four (4) hours after the H_2S CEMS measures an H_2S concentration in the refinery fuel gas stream greater than 1200 ppmv, ExxonMobil shall initiate sampling of the refinery fuel gas stream at the fuel header on a once-per-hour frequency using length-of-stain detector tubes pursuant to ASTM Method D4810–06, ''Standard Test Method for Hydrogen Sulfide in Natural Gas Using Length-of-Stain Detector Tubes'' (incorporated by reference, see paragraph (j) of this section) with the appropriate sample tube range. If the results exceed the tube's range, another tube of a higher range must be used until results are in the tube's range. ExxonMobil shall continue to use the length-of-stain detector tube method at this frequency until the H_2S CEMS measures an H_2S concentration in the refinery fuel gas stream equal to or less than 1200 ppmv continuously over a 3-hour period.

(C) When the length-of-stain detector tube method is required, SO_2 emissions from refinery fuel gas combustion shall be calculated as follows: the Hourly emissions shall be calculated using equation 1, 3-hour emissions shall be calculated using equation 2, and the Daily emissions shall be calculated using equation 3.

Equation 1: $E_H = K * C_H * Q_H$

Where:

E_H = Refinery fuel gas combustion hourly emissions in pounds per hour, rounded to the nearest tenth of a pound;

$K = 1.688 \times 10^{-7}$ in (pounds/standard cubic feet (SCF))/parts per million (ppm);

C_H = Hourly refinery fuel gas H_2S concentration in ppm determined by the length-of-stain detector tube method as required by paragraph (f)(3)(ii)(B) of this section; and

Q_H = actual fuel gas firing rate in standard cubic feet per hour (SCFH), as measured by the monitor required by section 6(B)(8) of ExxonMobil's 1998 exhibit.

Equation 2: (Refinery fuel gas combustion 3-hour emissions) = Σ (Hourly emissions within the 3-hour period as determined by equation 1).

Equation 3: (Refinery fuel gas combustion daily emissions) = Σ (3-hour emissions within the day as determined by equation 2).

(4) *Coker CO Boiler stack requirements.*

(i) *Emission limits.* When ExxonMobil's Coker unit is operating and Coker unit flue gases are burned in the Coker CO Boiler, the applicable emission limits are contained in section 3(B)(1) of ExxonMobil's 2000 exhibit.

(ii) *Compliance determining method.*

(A) Compliance with the emission limits referenced in paragraph (f)(4)(i) of this section shall be determined by measuring the SO_2 concentration and flow rate in the Coker CO Boiler stack according to the procedures in paragraphs (f)(4)(ii)(B) and (C) of this section and calculating emissions according to the equations in paragraph (f)(4)(ii)(D) of this section.

(B) Beginning on May 21, 2008, ExxonMobil shall operate and maintain a CEMS to measure sulfur dioxide concentrations in the Coker CO Boiler stack. Whenever ExxonMobil's Coker unit is operating and Coker unit flue gases are exhausted through the Coker CO Boiler stack, the CEMS shall be operational and shall achieve a temporal sampling resolution of at least one (1) concentration measurement per minute, meet the requirements expressed in the definition of ''hourly average'' in paragraph (c)(14) of this section, and meet the CEMS Performance Specifications contained in section 6(C) of ExxonMobil's 1998 exhibit, except that ExxonMobil shall perform a Cylinder Gas Audit (CGA) or Relative Accuracy Audit (RAA) which meets the requirements of 40 CFR part 60, Appendix F, within eight (8) hours of when the Coker unit flue gases begin exhausting through the Coker CO Boiler stack. ExxonMobil shall perform an annual Relative Accuracy Test Audit (RATA) on the CEMS and notify EPA in writing of each annual RATA a minimum of 25 working days prior to actual testing.

(C) Beginning on May 21, 2008, ExxonMobil shall operate and maintain a continuous stack flow rate monitor to measure the stack gas flow rates in the Coker CO Boiler stack. Whenever ExxonMobil's Coker unit is operating and Coker unit flue gases are exhausted through the Coker CO Boiler stack, this CEMS shall be operational and shall achieve a temporal sampling resolution of at least one (1) flow rate measurement per minute, meet the requirements expressed in the definition of ''hourly average'' in paragraph (c)(14) of this section, and meet the Stack Gas Flow Rate Monitor Performance Specifications of section 6(D) of ExxonMobil's 1998 exhibit, except that ExxonMobil shall perform an annual Relative Accuracy Test Audit (RATA) on the CEMS and notify EPA in writing of each annual RATA a minimum of 25 working days prior to actual testing.

(D) SO_2 emissions from the Coker CO Boiler stack shall be determined in accordance with the equations in sections 2(A)(1), (8), (11)(a), and (16) of ExxonMobil's 1998 exhibit.

(5) *Data reporting requirements.*

(i) ExxonMobil shall submit quarterly reports beginning with the first calendar quarter following May 21, 2008. The quarterly reports shall be submitted within 30 days of the end of each calendar quarter. The quarterly reports shall be submitted to EPA at the following address: Air Program Contact, EPA Montana Operations Office, Federal Building, 10 West 15th Street, Suite 3200, Helena, MT 59626.

The quarterly report shall be certified for accuracy in writing by a responsible ExxonMobil official. The quarterly report shall consist of both a comprehensive electronic-magnetic report and a written hard copy data summary report.

(ii) The electronic report shall be on magnetic or optical media, and such submittal shall follow the reporting format of electronic data being submitted to the MDEQ. EPA may modify the reporting format delineated in this section, and, thereafter, ExxonMobil shall follow the revised format. In addition to submitting the electronic quarterly reports to EPA, ExxonMobil shall also record, organize, and archive for at least five (5) years the same data, and upon request by EPA, ExxonMobil shall provide EPA with any data archived in accordance with this provision. The electronic report shall contain the following:

(A) Hourly average total sulfur concentrations as H_2S or SO_2 in ppm in the gas stream to the flare(s);

(B) Hourly average H_2S concentrations of the flare pilot and purge gases in ppm;

(C) Hourly average SO_2 concentrations in ppm from the Coker CO Boiler stack;

(D) Hourly average volumetric flow rates in SCFH of the flare pilot and purge gases;

(E) Hourly average volumetric flow rates in SCFH in the gas stream to the flare(s) and in the Coker CO Boiler stack;

(F) Hourly average H_2S concentrations in ppm from the refinery fuel gas system;

(G) Hourly average refinery fuel gas combustion units' actual fuel firing rate in SCFH;

(H) Hourly average temperature (in °F) and pressure (in mm or inches of Hg) of the gas stream to the flare(s);

(I) Hourly emissions in pounds per clock hour from the flare(s), Coker CO Boiler stack, and refinery fuel gas combustion system; and

(J) Daily calibration data for the CEMS described in paragraphs (f)(2)(ii), (f)(3)(ii) and (f)(4)(ii) of this section.

(iii) The quarterly written report shall contain the following information:

(A) The 3-hour emissions in pounds per 3-hour period from the flare(s), Coker CO Boiler stack, and refinery fuel gas combustion system;

(B) Periods in which only natural gas or an inert gas was used as flare pilot gas or purge gas or both;

(C) Daily emissions in pounds per calendar day from the Coker CO Boiler stack and refinery fuel gas combustion system;

(D) The results of all quarterly or other Cylinder Gas Audits (CGA), Relative Accuracy Audits (RAA), and annual Relative Accuracy Test Audits (RATA) for the CEMS described in paragraphs (f)(2)(ii) (flare total sulfur analyzer(s); pilot gas or purge gas H_2S analyzer(s)), (f)(3)(ii), and (f)(4)(ii) of this section, and the results of all annual calibrations and verifications for the volumetric flow, temperature, and pressure monitors;

(E) For all periods of flare volumetric flow rate monitoring system or total sulfur analyzer system downtime, Coker CO Boiler stack CEMS downtime, refinery fuel gas combustion system CEMS downtime, flare pilot gas or purge gas volumetric flow or H_2S analyzer system downtime, or failure to obtain or analyze a grab or integrated sample, the written report shall identify:

(*1*) Dates and times of downtime or failure;

(*2*) Reasons for downtime or failure;

(*3*) Corrective actions taken to mitigate downtime or failure; and

(*4*) The other methods, approved by EPA in the flare monitoring plan required by paragraph (h)(5) of this section, used to determine flare emissions;

(F) For all periods that the range of the flare or any pilot or purge gas volumetric flow rate monitor(s), any flare total sulfur analyzer(s), or any pilot or purge gas H_2S analyzer(s) is exceeded, the written report shall identify:

(*1*) Date and time when the range of the volumetric flow monitor(s), total sulfur analyzer(s), or H_2S analyzer(s) was exceeded, and

(*2*) The other methods, approved by EPA in the flare monitoring plan required by paragraph (h)(5) of this section, used to determine flare emissions;

(G) For all periods that the range of the refinery fuel gas CEMS is exceeded, the written report shall identify:

(*1*) Date, time, and duration when the range of the refinery fuel gas CEMS was exceeded;

(H) For all periods that the flare volumetric flow monitor or monitors are recording flow, yet any Flare Water Seal Monitoring Device indicates there is no flow, the written report shall identify:

(*1*) Date, time, and duration when the flare volumetric flow monitor(s) recorded flow, yet any Flare Water Seal Monitoring Device indicated there was no flow;

(I) For each 3-hour period and calendar day in which the flare emission limits, the Coker CO Boiler stack emission limits, or the fuel gas combustion system emission limits are exceeded, the written report shall identify:

(*1*) The date, start time, and end time of the excess emissions;

(*2*) Total hours of operation with excess emissions, the hourly emissions, the 3-hour emissions, and the daily emissions;

(*3*) All information regarding reasons for operating with excess emissions; and

(*4*) Corrective actions taken to mitigate excess emissions; and

(J) When no excess emissions have occurred or the continuous monitoring system(s) or manual system(s) have not been inoperative, repaired, or adjusted, such information shall be stated in the report.

(g) *Montana Sulphur & Chemical Company (MSCC) emission limits and compliance determining methods.*

(1) *Introduction.* The provisions for MSCC cover the following units:

(i) The flares, which consist of the 80-foot west flare, 125-foot east flare, and 100-meter flare.

(ii) The SRU 100-meter stack.

(iii) The auxiliary vent stacks and the units that can exhaust through the auxiliary vent stacks, which consist of the Railroad Boiler, the H–1 Unit, the H1–A unit, the H1–1 unit and the H1–2 unit.

(iv) The SRU 30-meter stack and the units that can exhaust through the SRU 30-meter stack. The units that can exhaust through the SRU 30-meter stack are identified in section 3(A)(2)(d) and (e) of MSCC's 1998 exhibit.

(2) *Flare requirements.*

(i) *Emission limit.* Total combined emissions of SO_2 from the 80-foot west flare, 125-foot east flare, and 100-meter flare shall not exceed 150.0 pounds per 3-hour period.

(ii) *Compliance determining method.* Compliance with the emission limit in paragraph (g)(2)(i) of this section shall be determined in accordance with paragraph (h) of this section. In the event MSCC cannot monitor all three flares from a single location, MSCC shall establish multiple monitoring locations.

(3) *SRU 100-meter stack requirements.*

(i) *Emission limits.* Emissions of SO_2 from the SRU 100-meter stack shall not exceed:

(A) 2,981.7 pounds per 3-hour period;

(B) 23,853.6 pounds per calendar day; and

(C) 9,088,000 pounds per calendar year.

(ii) *Compliance determining method.*

(A) Compliance with the emission limits contained in paragraph (g)(3)(i) of this section shall be determined by the CEMS and emission testing methods required by sections 6(B)(1) and (2) and section 5, respectively, of MSCC's 1998 exhibit.

(B) MSCC shall notify EPA in writing of each annual source test a minimum of 25 working days prior to actual testing.

(C) The CEMS referenced in paragraph (g)(3)(ii)(A) of this section

shall achieve a temporal sampling resolution of at least one (1) concentration and flow rate measurement per minute, meet the requirements expressed in the definition of ''hourly average'' in paragraph (c)(14) of this section, and meet the ''CEM Performance Specifications'' in sections 6(C) and (D) of MSCC's 1998 exhibit, except that MSCC shall also notify EPA in writing of each annual Relative Accuracy Test Audit at least 25 working days prior to actual testing.

(4) *Auxiliary vent stacks.*

(i) *Emission limits.*

(A) Total combined emissions of SO_2 from the auxiliary vent stacks shall not exceed 12.0 pounds per 3-hour period;

(B) Total combined emissions of SO_2 from the auxiliary vent stacks shall not exceed 96.0 pounds per calendar day;

(C) Total combined emissions of SO_2 from the auxiliary vent stacks shall not exceed 35,040 pounds per calendar year; and

(D) The H_2S concentration in the fuel burned in the Railroad Boiler, the H–1 Unit, the H1–A unit, the H1–1 unit, and the H1–2 unit, while any of these units is exhausting to the auxiliary vent stacks, shall not exceed 160 ppm per 3-hour period and 100 ppm per calendar day.

(ii) *Compliance determining method.*

(A) Compliance with the emission limits in paragraph (g)(4)(i) of this section shall be determined by measuring the H_2S concentration of the fuel burned in the Railroad Boiler, the H–1 Unit, the H1–A unit, the H1–1 unit, and the H1–2 unit (when fuel other than natural gas is burned in one or more of these units) according to the procedures in paragraph (g)(4)(ii)(C) of this section.

(B) Beginning June 20, 2008, MSCC shall maintain logs of:

(*1*) The dates and time periods that emissions are exhausted through the auxiliary vent stacks,

(*2*) The heaters and boilers that are exhausting to the auxiliary vent stacks during such time periods, and

(*3*) The type of fuel burned in the heaters and boilers during such time periods.

(C) Beginning June 20, 2008, MSCC shall measure the H_2S content of the fuel burned when fuel other than natural gas is burned in a heater or boiler that is exhausting to an auxiliary vent stack. MSCC shall begin measuring the H_2S content of the fuel at the fuel header within one (1) hour from when a heater or boiler begins exhausting to an auxiliary vent stack and on a once-per-3-hour period frequency until no heater or boiler is exhausting to an auxiliary vent stack. To determine the H_2S content of the fuel burned, MSCC shall use length-of-stain detector tubes pursuant to ASTM Method D4810–06, ''Standard Test Method for Hydrogen Sulfide in Natural Gas Using Length-of-Stain Detector Tubes'' (incorporated by reference, see paragraph (j) of this section) with the appropriate sample tube range. If the results exceed the tube's range, another tube of a higher range must be used until results are in the tube's range.

(5) *SRU 30-meter stack.*

(i) *Emission limits.*

(A) Emissions of SO_2 from the SRU 30-meter stack shall not exceed 12.0 pounds per 3-hour period;

(B) Emissions of SO_2 from the SRU 30-meter stack shall not exceed 96.0 pounds per calendar day;

(C) Emissions of SO_2 from the SRU 30-meter stack shall not exceed 35,040 pounds per calendar year; and

(D) The H_2S concentration in the fuel burned in the heaters and boilers described in paragraph (g)(1)(iv) of this section, while any of these units is exhausting to the SRU 30-meter stack, shall not exceed 160 ppm per 3-hour period and 100 ppm per calendar day.

(ii) *Compliance determining method.*

(A) Compliance with the emission limits in paragraph (g)(5)(i) of this section shall be determined by measuring the H_2S concentration of the fuel burned in the heaters and boilers described in paragraph (g)(1)(iv) of this section (when fuel other than natural gas is burned in one or more of these heaters or boilers) according to the procedures in paragraph (g)(5)(ii)(C) of this section.

(B) Beginning June 20, 2008, MSCC shall maintain logs of:

(*1*) The dates and time periods that emissions are exhausted through the SRU 30-meter stack,

(*2*) The heaters and boilers that are exhausting to the SRU 30-meter stack during such time periods, and

(*3*) The type of fuel burned in the heaters and boilers during such time periods.

(C) Beginning June 20, 2008, MSCC shall measure the H_2S content of the fuel burned when fuel other than natural gas is burned in a heater or boiler that is exhausting to the SRU 30-meter stack. MSCC shall begin measuring the H_2S content of the fuel at the fuel header within one (1) hour from when any heater or boiler begins exhausting to the SRU 30-meter stack and on a once-per-3-hour period frequency until no heater or boiler is exhausting to the SRU 30-meter stack. To determine the H_2S content of the fuel burned, MSCC shall use length-of-stain detector tubes pursuant to ASTM Method D4810–06, ''Standard Test Method for Hydrogen Sulfide in Natural Gas Using Length-of-Stain Detector Tubes'' (incorporated by reference, see paragraph (j) of this section) with the appropriate sample tube range. If the results exceed the tube's range, another tube of a higher range must be used until results are in the tube's range.

(6) Data reporting requirements:

(i) MSCC shall submit quarterly reports beginning with the first calendar quarter following May 21, 2008. The quarterly reports shall be submitted within 30 days of the end of each calendar quarter. The quarterly reports shall be submitted to EPA at the following address: Air Program Contact, EPA Montana Operations Office, Federal Building, 10 West 15th Street, Suite 3200, Helena, MT 59626.

The quarterly report shall be certified for accuracy in writing by a responsible MSCC official. The quarterly report shall consist of both a comprehensive electronic-magnetic report and a written hard copy data summary report.

(ii) The electronic report shall be on magnetic or optical media, and such submittal shall follow the reporting format of electronic data being submitted to the MDEQ. EPA may modify the reporting format delineated in this section, and, thereafter, MSCC shall follow the revised format. In addition to submitting the electronic quarterly reports to EPA, MSCC shall also record, organize, and archive for at least five (5) years the same data, and upon request by EPA, MSCC shall provide EPA with any data archived in accordance with this provision. The electronic report shall contain the following:

(A) Hourly average total sulfur concentrations as H_2S or SO_2 in ppm, in the gas stream to the flare(s);

(B) Hourly average H_2S concentrations of the flare pilot and purge gases in ppm;

(C) Hourly average SO_2 concentrations in ppm from the SRU 100-meter stack;

(D) Hourly average volumetric flow rates in SCFH in the gas stream to the flare(s) and in the SRU 100-meter stack;

(E) Hourly average volumetric flow rates in SCFH of the flare pilot and purge gases;

(F) Hourly average temperature (in (F) and pressure (in mm or inches of Hg) in the gas stream to the flare(s);

(G) Hourly emissions in pounds per clock hour from the flare(s) and SRU 100-meter stack;

(H) Daily calibration data for all flare CEMS, all pilot gas and purge gas CEMS, and the SRU 100-meter stack CEMS;

(iii) The quarterly written report shall contain the following information:

(A) The 3-hour emissions in pounds per 3-hour period from the flare(s) and SRU 100-meter stack, and 3-hour H_2S concentrations in the fuel burned in the heaters and boilers described in paragraphs (g)(1)(iii) and (iv) of this section while any of these units is exhausting to the SRU 30-meter stack or auxiliary vent stacks and burning fuel other than natural gas;

(B) Periods in which only natural gas or an inert gas was used as flare pilot gas or purge gas or both;

(C) Daily emissions in pounds per calendar day from the SRU 100-meter stack;

(D) Annual emissions of SO_2 in pounds per calendar year from the SRU 100-meter stack;

(E) The results of all quarterly Cylinder Gas Audits (CGA), Relative Accuracy Audits (RAA) and annual Relative Accuracy Test Audits (RATA) for all total sulfur analyzer(s), all H_2S analyzer(s), and the SRU 100-meter stack CEMS, and the results of all annual calibrations and verifications for the volumetric flow, temperature, and pressure monitors;

(F) For all periods of flare volumetric flow rate monitoring system or total sulfur analyzer system downtime, SRU 100-meter CEMS downtime, flare pilot gas or purge gas volumetric flow or H_2S analyzer system downtime, failure to obtain or analyze a grab or integrated sample, or failure to obtain an H_2S concentration sample as required by paragraphs (g)(4)(ii)(C) and (g)(5)(ii)(C) of this section, the written report shall identify:

(*1*) Dates and times of downtime or failure;

(*2*) Reasons for downtime or failure;

(*3*) Corrective actions taken to mitigate downtime or failure; and

(*4*) The other methods, approved by EPA in the flare monitoring plan required by paragraph (h)(5) of this section, used to determine flare emissions;

(G) For all periods that the range of the flare or any pilot or purge gas volumetric flow rate monitor(s), any flare total sulfur analyzer(s), or any pilot or purge gas H_2S analyzer(s), is exceeded, the written report shall identify:

(*1*) Date and time when the range of the volumetric flow monitor(s), total sulfur analyzer(s), or H_2S analyzer(s) was exceeded; and

(*2*) The other methods, approved by EPA in the flare monitoring plan required by paragraph (h)(5) of this section, used to determine flare emissions;

(H) For all periods that the flare volumetric flow monitor or monitors are recording flow, yet any Flare Water Seal Monitoring Device indicates there is no flow, the written report shall identify:

(*1*) Date, time, and duration when the flare volumetric flow monitor(s) recorded flow, yet any Flare Water Seal Monitoring Device indicated there was no flow;

(I) For each 3-hour period and calendar day in which the flare emission limit, the SRU 100-meter stack emission limits, the SRU 30-meter stack emission limits, or auxiliary vent stack emission limits are exceeded, the written report shall identify:

(1) The date, start time, and end time of the excess emissions;

(*2*) Total hours of operation with excess emissions, the hourly emissions, the 3-hour emissions, and the daily emissions;

(*3*) All information regarding reasons for operating with excess emissions; and

(*4*) Corrective actions taken to mitigate excess emissions;

(J) For instances in which emissions are exhausted through the auxiliary vent stacks or 30-meter stack, the quarterly written report shall identify:

(*1*) The dates and time periods that emissions were exhausted through the auxiliary vent stacks or the 30-meter stack;

(*2*) The heaters and boilers that were exhausting to the auxiliary vent stacks or 30-meter stack during such time periods; and

(*3*) The type of fuel burned in the heaters and boilers during such time periods; and

(K) When no excess emissions have occurred or the continuous monitoring system(s) or manual system(s) have not been inoperative, repaired, or adjusted, such information shall be stated in the report.

(h) *Flare compliance determining method.*

(1) Compliance with the emission limits in paragraphs (d)(2)(i), (e)(2)(i), (f)(2)(i) and (g)(2)(i) of this section shall be determined by measuring the total sulfur concentration and volumetric flow rate of the gas stream to the flare(s) (corrected to one (1) atmosphere pressure and 68° F) and using the methods contained in the flare monitoring plan required by paragraph (h)(5) of this section. The volumetric flow rate of the gas stream to the flare(s) shall be determined in accordance with the requirements in paragraph (h)(2) of this section and the total sulfur concentration of the gas stream to the flare(s) shall be determined in accordance with paragraph (h)(3) of this section.

(2) *Flare flow monitoring:*

(i) Within 365 days after receiving EPA approval of the flare monitoring plan required by paragraph (h)(5) of this section, each facility named in paragraph (a) of this section shall install and calibrate, and, thereafter, calibrate, maintain and operate, a continuous flow monitoring system capable of measuring the volumetric flow of the gas stream to the flare(s) in accordance with the specifications contained in paragraphs (h)(2)(iii) through (vi) of this section. The flow monitoring system shall require more than one flow monitoring device or flow measurements at more than one location if one monitor cannot measure the total volumetric flow to each flare.

(ii) Volumetric flow monitors meeting the proposed volumetric flow monitoring specifications below should be able to measure the majority of volumetric flow in the gas streams to the flare. However, in rare events (e.g., upset conditions) the flow to the flare may exceed the range of the monitor. In such cases, or when the volumetric flow monitor or monitors are not working, other methods approved by EPA in the flare monitoring plan required by paragraph (h)(5) of this section shall be used to determine the volumetric flow rate to the flare, which shall then be used to calculate SO_2 emissions. In quarterly reports, sources shall indicate when these other methods are used.

(iii) The flare gas stream volumetric flow rate shall be measured on an actual wet basis, converted to Standard Conditions, and reported in SCFH. The minimum detectable velocity of the flow monitoring device(s) shall be 0.1 feet per second (fps). The flow monitoring device(s) shall continuously measure the range of flow rates corresponding to velocities from 0.5 to 275 fps and have a manufacturer's specified accuracy of ±5% of the measured flow over the range of 1.0 to 275 fps and ±20% of the measured flow over the range of 0.1 to 1.0 fps. The volumetric flow monitor(s) shall feature automated daily calibrations at low and high ranges. The volumetric flow monitor(s) shall be calibrated annually according to manufacturer's specifications.

(iv) For correcting flow rate to standard conditions (defined as 68°F and 760 mm, or 29.92 inches, of Hg), temperature and pressure shall be monitored continuously. Temperature and pressure shall be monitored in the same location as volumetric flow, and the temperature and pressure monitors shall be calibrated prior to installation according to manufacturer's specifications and, thereafter, annually to meet accuracy specifications as follows: The temperature monitor shall

be calibrated to within ± 2.0% at absolute temperature and the pressure monitor shall be calibrated to within ± 5.0 mmHg;

(v) The flow monitoring device(s) shall be calibrated prior to installation to demonstrate accuracy of the measured flow to within 5.0% at flow rates equivalent to 30%, 60%, and 90% of monitor full scale.

(vi) Each volumetric flow device shall achieve a temporal sampling resolution of at least one (1) flow rate measurement per minute, meet the requirements expressed in the definition of ''hourly average'' in paragraph (c)(14) of this section, and be installed in a manner and at a location that will allow for accurate measurements of the total volume of the gas stream going to each flare. Each temperature and pressure monitoring device shall achieve a temporal sampling resolution of at least one (1) measurement per minute, meet the requirements expressed in the definition of ''hourly average'' in paragraph (c)(14) of this section, and be installed in a manner that will allow for accurate measurements.

(vii) In addition to the continuous flow monitors, facilities may use flare water seal monitoring devices to determine whether there is flow going to the flare. If used, owners or operators shall install, calibrate, operate, and maintain these devices according to manufacturer's specifications. The devices shall include a continuous monitoring system that:

(A) Monitors the status of the water seal to indicate when flow is going to the flare;

(B) Automatically records the time and duration when flow is going to the flare; and

(C) Verifies that the physical seal has been restored after flow has been sent to the flare.

If the water seal monitoring devices indicate that there is no flow going to the flare, yet the continuous flow monitor is indicating flow, the presumption will be that no flow is going to the flare.

(viii) Each facility named in paragraph (a) of this section, that does not certify that only natural gas or an inert gas is used for both the pilot gas and purge gas, shall determine the volumetric flow of each pilot gas and purge gas stream for which natural gas or inert gas is not used by one of the following methods:

(A) Measure the volumetric flow of the gas using continuous flow monitoring devices on an actual wet basis, converted to Standard Conditions, and reported in SCFH. Each flow monitoring device shall achieve a temporal sampling resolution of at least one (1) flow rate measurement per minute, meet the requirements expressed in the definition of ''hourly average'' in paragraph (c)(14) of this section, and be installed in a manner and at a location that will allow for accurate measurements of the total volume of the gas. Gas flow rate monitor accuracy determinations shall be required at least once every 48 months or more frequently at routine refinery turn-around. In cases when the flow monitoring device or devices are not working or the range of the monitoring device(s) is exceeded, other methods approved by EPA in the flare monitoring plan required by paragraph (h)(5) of this section shall be used to determine volumetric flow of the gas which shall then be used to calculate SO_2 emissions. In quarterly reports, sources shall indicate when other methods are used; or

(B) Use parameters and methods approved by EPA in the flare monitoring plan required by paragraph (h)(5) of this section to calculate the volumetric flows of the gas, in SCFH.

(3) *Flare concentration monitoring:*

(i) Within 365 days after receiving EPA approval of the flare monitoring plan required by paragraph (h)(5) of this section, each facility named in paragraph (a) of this section shall determine the total sulfur concentration of the gas stream to the flare(s) using either continuous total sulfur analyzers or grab or integrated sampling with lab analysis, as described in the following paragraphs:

(A) Continuous total sulfur concentration monitoring. If a facility chooses to use continuous total sulfur concentration monitoring, the following requirements apply:

(*1*) The facility shall install and calibrate, and, thereafter, calibrate, maintain and operate, a continuous total sulfur concentration monitoring system capable of measuring the total sulfur concentration of the gas stream to each flare. Continuous monitoring shall occur at a location or locations that are representative of the gas combusted in the flare and be capable of measuring the normally expected range of total sulfur in the gas stream to the flare. The concentration monitoring system shall require more than one concentration monitoring device or concentration measurements at more than one location if one monitor cannot measure the total sulfur concentration to each flare. Total sulfur concentration shall be reported as H_2S or SO_2 in ppm. In cases when the total sulfur analyzer or analyzers are not working or the concentration of the total sulfur exceeds the range of the analyzer(s), other methods, approved by EPA in the flare monitoring plan required by paragraph (h)(5) of this section, shall be used to determine total sulfur concentrations, which shall then be used to calculate SO_2 emissions. In quarterly reports, sources shall indicate when these other methods are used.

(*2*) The total sulfur analyzer(s) shall achieve a temporal sampling resolution of at least one (1) concentration measurement per 15 minutes, meet the requirements expressed in the definition of ''hourly average'' in paragraph (c)(14) of this section, be installed, certified (on a concentration basis), and operated in accordance with 40 CFR part 60, Appendix B, Performance Specification 5, and be subject to and meet the quality assurance and quality control requirements (on a concentration basis) of 40 CFR part 60, Appendix F.

(*3*) Each affected facility named in paragraph (a) of this section shall notify the Air Program Contact at EPA's Montana Operations Office, Federal Building, 10 West 15th Street, Suite 3200, Helena, MT 59626, in writing of each Relative Accuracy Test Audit a minimum of 25 working days prior to the actual testing.

(B) Grab or integrated total sulfur concentration monitoring: If a facility chooses grab or integrated sampling instead of continuous total sulfur concentration monitoring, the facility shall comply with the methods specified in either paragraph (h)(3)(i)(B)(*1*) (''Grab Sampling'') or (h)(3)(B)(i)(B)(*2*) (''Integrated Sampling''), and the requirements of paragraphs (h)(3)(i)(B)(*3*) (''Sample Analysis''), (h)(3)(i)(B)(*4*) (''Exemptions''), and (h)(3)(i)(B)(*5*) (''Missing or Unanalyzed Sample'') of this section, as follows:

(*1*) Grab Sampling. Each facility that chooses to use grab sampling shall meet the following requirements: if the flow rate of the gas stream to the flare in any consecutive 15-minute period continuously exceeds 0.5 feet per second (fps) and the water seal monitoring device, if any, indicates that flow is going to the flare, a grab sample shall be collected within 15 minutes. The grab sample shall be collected at a location that is representative of the gas combusted in the flare. Thereafter, the sampling frequency shall be one (1) grab sample every three (3) hours, which shall continue until the velocity of the gas stream going to the flare in any consecutive 15-minute period is continuously 0.5 fps or less. Samples shall be analyzed according to paragraph (h)(3)(i)(B)(*3*) of this section. The requirements of this paragraph (h)(3)(i)(B)(*1*) shall apply to each flare at

a facility for which the sampling threshold is exceeded.

(*2*) Integrated Sampling. Each facility that chooses to use integrated sampling shall meet the following requirements: if the flow rate of the gas stream to the flare in any consecutive 15-minute period continuously exceeds 0.5 feet per second (fps) and the water seal monitoring device, if any, indicates that flow is going to the flare, a sample shall be collected within 15 minutes. The sample shall be collected at a location that is representative of the gas combusted in the flare. The sampling frequency, thereafter, shall be a minimum of one (1) aliquot for each 15-minute period until the sample container is full, or until the end of a 3-hour period is reached, whichever comes sooner. Within 30 minutes thereafter, a new sample container shall be placed in service, and sampling on this frequency, and in this manner, shall continue until the velocity of the gas stream going to the flare in any consecutive 15-minute period is continuously 0.5 fps or less. Samples shall be analyzed according to paragraph (h)(3)(i)(B)(*3*) of this section. The requirements of this paragraph (h)(3)(i)(B)(*2*) shall apply to each flare at a facility for which the sampling threshold is exceeded.

(*3*) Samples shall be analyzed using ASTM Method D4468–85 (Reapproved 2000) ''Standard Test Method for Total Sulfur in Gaseous Fuels by Hydrogenolysis and Rateometric Colorimetry,'' (incorporated by reference, see paragraph (j) of this section) ASTM Method D5504–01 (Reapproved 2006) ''Standard Test Method for Determination of Sulfur Compounds in Natural Gas and Gaseous Fuels by Gas Chromatography and Chemiluminescence,'' (incorporated by reference, see paragraph (j) of this section) or 40 CFR part 60, Appendix A–5, Method 15A ''Determination of Total Reduced Sulfur Emissions From the Sulfur Recovery Plants in Petroleum Refineries.'' Total sulfur concentration shall be reported as H_2S or SO_2 in ppm.

(*4*) Exemptions. For facilities using a sampling method specified in either paragraph (h)(3)(i)(B)(*1*) (''Grab Sampling'') or (h)(3)(i)(B)(*2*) (''Integrated Sampling'') of this section, obtaining a sample is not required if flaring is a result of a catastrophic or other unusual event, including a major fire or an explosion at the facility, such that collecting a sample at the EPA-approved location during the relevant period is infeasible or constitutes a safety hazard, provided that the owner or operator shall collect a sample at an alternative location if feasible, safe, and representative of the flaring event. The owner or operator shall demonstrate to EPA that it was infeasible or unsafe to collect a sample or to collect a sample at the sampling location approved by EPA in the flare monitoring plan required by paragraph (h)(5) of this section. The owner or operator shall also demonstrate to EPA that any sample collected at an alternative location is representative of the flaring incident. If a facility experiences ongoing difficulties collecting grab or integrated samples in accordance with its flare monitoring plan approved by EPA pursuant to paragraph (h)(5) of this section, EPA may require the facility to revise its flare monitoring plan and use continuous total sulfur concentration monitoring as described in paragraph (h)(3)(i)(A) of this section or other reliable method to determine total sulfur concentrations of the gas stream to the flare.

(*5*) Missing or Unanalyzed Samples. For facilities using a sampling method specified in either paragraph (h)(3)(i)(B)(*1*) (''Grab Sampling'') or (h)(3)(i)(B)(*2*) (''Integrated Sampling'') of this section, if a required sample is not obtained or analyzed for any reason, other methods approved by EPA in the flare monitoring plan required by paragraph (h)(5) of this section shall be used to determine total sulfur concentrations, which shall then be used to calculate SO_2 emissions. In quarterly reports, sources shall indicate when these other methods are used.

(*6*) Reporting. For facilities using a sampling method specified in either paragraph (h)(3)(i)(B)(*1*) (''Grab Sampling'') or (h)(3)(i)(B)(*2*) (''Integrated Sampling'') of this section, since normally only one (1) sample per flare will be analyzed for a 3-hour period, the total sulfur concentration of a sample obtained during a given 3-hour period shall be substituted for each hour of such 3-hour period. If integrated sampling for a flare produces more than one (1) sample container during a 3-hour period, and the gas in each container is analyzed separately, the concentrations for the containers shall be averaged. For that flare, the resulting average shall be substituted for each hour of the 3-hour period during which the sampling occurred. The substituted hourly total sulfur concentrations determined per this paragraph shall be used to determine hourly emissions from the flare.

(ii) Each facility named in paragraph (a) of this section that does not certify that only natural gas or an inert gas is used for both the pilot gas and purge gas shall determine the H_2S concentration of each pilot gas and purge gas stream for which natural gas or inert gas is not used by one of the following methods:

(A) Measure the H_2S concentration of the gas by continuous H_2S analyzer. The H_2S concentration analyzer(s) shall achieve a temporal sampling resolution of at least one (1) concentration measurement per three (3) minutes, meet the requirements expressed in the definition of ''hourly average'' in paragraph (c)(14) of this section, be installed, certified (on a concentration basis), and operated in accordance with 40 CFR part 60, Appendix B, Performance Specification 2, and be subject to and meet the quality assurance and quality control requirements (on a concentration basis) of 40 CFR part 60, Appendix F. In cases where the H_2S analyzer or analyzers are not working or the H_2S concentration exceeds the range of the analyzer(s), other methods approved by EPA in the flare monitoring plan required by paragraph (h)(5) of this section shall be used to determine the H_2S concentration of the gas, which shall then be used to calculate SO_2 emissions. In quarterly reports, sources shall indicate when other methods are used; or

(B) Use methods approved by EPA as part of the facility's flare monitoring plan required by paragraph (h)(5) of this section to estimate the H_2S concentration of the gas.

(4) *Calculation of SO_2 emissions from flares.* Methods for calculating hourly and 3-hour SO_2 emissions from flares shall be submitted to EPA as part of the flare monitoring plan required by paragraph (h)(5) of this section. Following approval by EPA, such methods shall be followed for calculating hourly and 3-hour SO_2 emissions from a facility's flare(s).

(5) By October 20, 2008, each facility named in paragraph (a) of this section shall submit a flare monitoring plan. Each flare monitoring plan shall include, at a minimum, the following:

(i) A facility plot plan showing the location of each flare in relation to the general plant layout;

(ii) Drawing(s) with dimensions, preferably to scale, and an as-built process flow diagram of the flare(s) identifying major components, such as flare header, flare stack, flare tip(s) or burner(s), purge gas system, pilot gas system, water seal, knockout drum, and molecular seal;

(iii) A representative flow diagram showing the interconnections of the flare system(s) with vapor recovery system(s), process units, and other equipment as applicable;

(iv) A complete description of the gas flaring process for an integrated gas

flaring system that describes the method of operation of the flares;

(v) A complete description of the vapor recovery system(s) which have interconnection to a flare, such as compressor description(s); design capacities of each compressor and the vapor recovery system; and the method currently used to determine and record the amount of vapors recovered;

(vi) A complete description of the proposed method to monitor, determine, and record the total volume and total sulfur concentration of gases combusted in the flare, including drawing(s) with dimensions, preferably to scale, showing the following information for the proposed flare gas stream monitoring systems:

(A) The locations to be used for all monitoring and sampling, including, but not limited to: Flare flow monitors, total sulfur analyzers, concentration integrated sampling, concentration grab sampling, water seal monitoring devices, pilot and purge gas flow monitors, and pilot and purge gas concentration monitors;

(vii) A description of the method(s) used to determine, and reasoning behind, all monitoring and sampling locations;

(viii) The following information regarding pilot gas and purge gas for each flare:

(A) Type(s) of gas used;

(B) A complete description of the monitor(s) to be used, or the other parameters that will be used and monitored, to determine volumetric flows of the pilot gas and purge gas streams for which natural gas or inert gas is not used; and

(C) A complete description of the analyzer(s) to be used to determine, or other methods that will be used to estimate, the H_2S concentrations in the pilot gas and purge gas streams for which natural gas or inert gas is not used;

(ix) A detailed description of manufacturer's specifications, including, but not limited to, make, model, type, range, precision, accuracy, calibration, maintenance, quality assurance procedure, and any other relevant specifications and information referenced in paragraphs (h)(2) and (3) of this section for all existing and proposed flow monitoring devices and total sulfur analyzers;

(x) The following information if grab or integrated sampling is used:

(A) A complete description of proposed analytical and sampling methods if grab or integrated sampling methods will be used for determining the total sulfur concentration of the gas stream going to the flare;

(B) A detailed description of manufacturer's specifications, including, but not limited to, make, model, type, maintenance, and quality assurance procedures for the integrated sampling device, if used; and

(C) A complete description of the proposed method to alert personnel designated to collect samples that the trigger for collecting a sample has occurred;

(xi) A complete description of the methods to be used to estimate flare emissions when any flare, pilot gas, or purge gas volumetric flow monitoring devices, total sulfur analyzers, or grab or integrated sampling methods, or pilot gas or purge gas H_2S analyzers are not working or available, or the operating range of the monitors or analyzers is exceeded;

(xii) A complete description of the proposed data recording, collection, and management system and any other relevant specifications and information referenced in paragraphs (h)(2) and (3) of this section for each flare monitoring system;

(xiii) The following information for each flare using a water seal monitoring device:

(A) A detailed description of manufacturer's specifications, including, but not limited to, make, model, type, maintenance, and quality assurance procedures;

(B) A complete description of the proposed methods to determine that the water seal is no longer intact and flow is going to the flare, and the data used to establish, and reasoning behind, these methods;

(xiv) A schedule for the installation and operation of each flare monitoring system consistent with the deadline in paragraphs (h)(2) and (h)(3) of this section; and

(xv) A complete description of the methods to be used for calculating hourly and 3-hour SO_2 emissions from flares.

(6) Thirty (30) days prior to installing any continuous monitor or integrated sampler pursuant to paragraphs (h)(2) and (3) of this section, each facility named in paragraph (a) of this section shall submit for EPA review a quality assurance/quality control (QA/QC) plan for each monitor or sampler being installed.

(i) *Affirmative defense provisions for exceedances of flare emission limits during malfunctions, startups, and shutdowns.*

(1) In response to an action to enforce the emission limits in paragraphs (d)(2)(i), (e)(2)(i), (f)(2)(i), and (g)(2)(i) of this section, owners and/or operators of the facilities named in paragraph (a) of this section may assert an affirmative defense to a claim for civil penalties for exceedances of such limits during periods of malfunction, startup, or shutdown. To establish the affirmative defense and to be relieved of a civil penalty in any action to enforce such a limit, the owner or operator of the facility must meet the notification requirements of paragraph (i)(2) of this section in a timely manner and prove by a preponderance of evidence that:

(i) For claims of malfunction:

(A) The excess emissions were caused by a sudden, unavoidable breakdown of equipment, or a sudden, unavoidable failure of a process to operate in the normal or usual manner, beyond the control of the owner or operator;

(B) The excess emissions:

(*1*) Did not stem from any activity or event that could have been foreseen and avoided, or planned for; and

(*2*) Could not have been avoided by better operation and maintenance practices;

(C) Repairs were made as expeditiously as possible when the applicable emission limitations were being exceeded. Off-shift and overtime labor were used, to the extent practicable;

(D) The amount and duration of the excess emissions (including any bypass) were minimized to the maximum extent practicable during periods of such emissions;

(ii) For claims of startup or shutdown:

(A) All or a portion of the facility was in startup or shutdown mode, resulting in the need to route gases to the flare;

(B) The periods of excess emissions that occurred during startup and shutdown were short and infrequent and could not have been prevented through careful planning and design or better operation and maintenance practices; and

(C) The frequency and duration of operation in startup or shutdown mode were minimized to the maximum extent practicable;

(iii) For claims of malfunction, startup, or shutdown:

(A) If the excess emissions resulted from a bypass of control equipment or a process, then the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(B) All possible steps were taken to minimize the impact of the excess emissions on ambient air quality;

(C) All emissions monitoring systems were kept in operation if at all possible;

(D) The owner or operator's actions in response to the excess emissions were documented by properly signed, contemporaneous operating logs;

(E) The excess emissions were not part of a recurring pattern indicative of inadequate design, operation, or maintenance;

(F) At all times, the facility was operated in a manner consistent with good practices for minimizing emissions; and

(G) During the period of excess emissions, there were no exceedances of the SO_2 NAAQS that could be attributed to the emitting source.

(2) Notification. The owner or operator of the facility experiencing an exceedance of its flare emission limit(s) during startup, shutdown, or malfunction shall notify EPA verbally as soon as possible, but no later than noon of EPA's next working day, and shall submit written notification to EPA within 30 days of the initial occurrence of the exceedance. The written notification shall explain whether and how the elements set forth in paragraph (i)(1) of this section were met, and include all supporting documentation.

(3) Injunctive relief. The Affirmative Defense Provisions contained in paragraph (i)(1) of this section shall not be available to claims for injunctive relief.

(j) *Incorporation by reference.* (1) The materials listed in this paragraph are incorporated by reference in the corresponding paragraphs noted. These incorporations by reference are approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on the date of the approval, and notice of any change in these materials will be published in the **Federal Register**. The materials are available for purchase at the corresponding address noted below, and all are available for inspection at the National Archives and Records Administration (NARA) and at the Air Program, EPA, Region 8, 1595 Wynkoop Street, Denver, CO. 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.*

(2) The following materials are available for purchase from the following address: American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, Post Office Box C700, West Conshohocken, PA 19428–2959, *www.astm.org*, or by calling (610) 832–9585.

(i) ASTM Method D4468–85 (Reapproved 2000), Standard Test Method for Total Sulfur in Gaseous Fuels by Hydrogenolysis and Rateometric Colorimetry, IBR approved for paragraph (h)(3)(i)(B)(*3*) of this section.

(ii) ASTM Method D4810–06, Standard Test Method for Hydrogen Sulfide in Natural Gas Using Length-of-Stain Detector Tubes, IBR approved for paragraphs (f)(3)(ii)(B), (g)(4)(ii)(C), and (g)(5)(ii)(C) of this section.

(ii) ASTM Method D5504–01 (Reapproved 2006), Standard Test Method for Determination of Sulfur Compounds in Natural Gas and Gaseous Fuels by Gas Chromatography IBR approved for paragraph (h)(3)(i)(B)(*3*) of this section.

[FR Doc. E8–7868 Filed 4–18–08; 8:45 am]

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Federal Register

Monday,
April 21, 2008

Part III

Department of Agriculture

Forest Service

36 CFR Part 219

National Forest System Land Management Planning; Final Rule

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 219

RIN 0596–AB86

National Forest System Land Management Planning

AGENCY: Forest Service, USDA.

ACTION: Final rule and record of decision.

SUMMARY: This final rule describes the National Forest System (NFS) land management planning framework; sets up requirements for sustainability of social, economic, and ecological systems; and gives directions for developing, amending, revising, and monitoring land management plans. It also clarifies that, absent rare circumstances, land management plans under this final rule are strategic in nature and are one stage in an adaptive cycle of planning for management of NFS lands. The intended effects of the rule are to strengthen the role of science in planning; to strengthen collaborative relationships with the public and other governmental entities; to reaffirm the principle of sustainable management consistent with the Multiple-Use Sustained-Yield Act of 1960 (MUSYA) and other authorities; and to streamline and improve the planning process by increasing adaptability to changes in social, economic, and environmental conditions. This rulemaking is the result of a United States District Court of Northern California order dated March 30, 2007, which enjoined the United States Department of Agriculture (the Department, the Agency, or the USDA) from putting into effect and using the land management planning rule published on January 5, 2005 (70 FR 1023) until it complies with the court's order regarding the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA), and the Administrative Procedure Act (APA) (*Citizens for Better Forestry* v. *USDA*, 481 F. Supp 2d 1059 (N.D. Cal. 2007)). The purpose of this final rule is to respond to the district court's ruling.

This final rule replaces the 2005 final rule (2005 rule) (70 FR 1022, Jan. 5, 2005), as amended March 3, 2006 (71 FR 10837) (which was enjoined by the district court's ruling) and the 2000 final rule (2000 rule) adopted on November 9, 2000 (65 FR 67514) as amended on September 29, 2004 (69 FR 58055).

DATES: *Effective Date:* This rule is effective April 21, 2008.

ADDRESSES: For more information, including a copy of the final environmental impact statement (EIS), refer to the World Wide Web/Internet at *http://www.fs.fed.us/emc/nfma/2008_planning_rule.html*. More information may be obtained on written request from the Director, Ecosystem Management Coordination Staff, Forest Service, USDA Mail Stop 1104, 1400 Independence Avenue, SW., Washington, DC 20250–1104

FOR FURTHER INFORMATION CONTACT: Ecosystem Management Coordination staff's Assistant Director for Planning Ric Rine at (202) 205–1022 or Planning Specialist Regis Terney at (202) 205–1552.

SUPPLEMENTARY INFORMATION: The following outline shows the contents of the preamble, which is also the record of decision (ROD), for this regulation.

Decision

Alternative M is selected as the final rule. This decision is based upon the ''Environmental Impact Statement—National Forest System Land Management Planning,'' USDA Forest Service, 2008, and the supporting record. This decision is not subject to Forest Service appeal regulations.

Public comment on the proposed action in the draft environmental impact statement (EIS) (alternative A) supported some modifications of the proposed rule. The Department reviewed and considered these comments, in consultation with agency managers, and concluded the rule could be improved if some suggested changes were incorporated. Many suggested modifications contributed to the development of alternative M in the final EIS.

Outline

Introduction and Background
Purpose and Need for the National Forest System Land Management Planning Rule
Public Involvement on the Proposed Rule
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- What General Issues Were Identified Regarding the Proposed Rule and Draft Environmental Impact Statement?

Alternatives Considered
- What Alternatives Were Considered by the Agency?
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- Decision and Rationale
- What Specific Comments Were Raised on the Proposed Rule and What Changes Were Made in Response to Those Comments?

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  Regulatory Impacts
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Introduction and Background

The Forest and Rangeland Renewable Resources Planning Act of 1974 (88 Stat. 476 *et seq.*), as amended by the National Forest Management Act of 1976 (NFMA) (90 Stat. 2949 *et seq.*; 16 U.S.C. 1601–1614), requires the Secretary of Agriculture (the Secretary) to promulgate regulations under the principles of the MUSYA that set up the process for the development and revision of land management plans (16 U.S.C. 1604(g)).

The first planning rule, adopted in 1979, was substantially amended on September 30, 1982 (47 FR 43026), and was amended, in part, on June 24, 1983 (48 FR 29122) and on September 7, 1983 (48 FR 40383). It is the 1982 planning rule (1982 rule), as amended, which has guided the development, amendment, and revision of the land management plans on all national forests and grasslands.

The Forest Service has undertaken several reviews of the planning process carried out under the 1982 rule. The first review took place in 1989 when the Forest Service, with the help of the Conservation Foundation, conducted a comprehensive review of the planning process and published the results in a summary report ''Synthesis of the Critique of Land Management Planning'' (1990). The critique concluded that the Agency spent too much time on planning, spent too much money on planning, and, therefore, the Forest Service needed a more efficient planning process.

The Forest Service published an advance notice of proposed rulemaking on February 15, 1991 (56 FR 6508) for possible revisions to the 1982 rule. A proposed rule was published on April 13, 1995 (60 FR 18886), however, the Secretary chose not to continue with that proposal.

In response to comments on the 1995 proposed rule, the Secretary convened a 13-member Committee of Scientists in late 1997 to evaluate the Forest Service's planning process and recommend changes. In 1998, the Committee of Scientists held meetings across the country and invited public participation in the discussions. The Committee's findings were issued in a final report, ''Sustaining the People's Lands'' (March 1999). In response to many findings in the 1990 ''Synthesis of the Critique of

Land Management Planning'' and the 1999 Committee of Scientists report, the Forest Service tried to prepare a rule that would provide a more efficient planning process. A proposed rule was published on October 5, 1999 (64 FR 54074), and a final rule was adopted on November 9, 2000 (65 FR 67514).

After adoption of the 2000 rule, the Secretary received many comments from individuals, groups, and organizations expressing concerns about putting into effect the 2000 rule. In addition, lawsuits challenging promulgation of the rule were brought by a coalition of 12 environmental groups from 7 States and by a coalition of industry groups (*Citizens for Better Forestry* v. *USDA*, No. C–01–0728–BZ– (N.D. Cal., filed February 16, 2001)) and (*American Forest and Paper Ass'n* v. *Veneman*, No. 01–CV–00871 (TPJ) (D.D.C., filed April 23, 2001)). Because of these lawsuits and concerns raised in comments to the Secretary, the Department of Agriculture started a review of the 2000 rule focusing on implementation. ''The NFMA Planning Rule Review,'' (USDA Forest Service April 2001) concluded many concerns about carrying out the rule were serious and needed immediate attention.

Having considered the reports of the review teams, the Acting Deputy Under Secretary for Natural Resources and Environment asked the Chief of the Forest Service to develop a proposed rule to replace the 2000 rule. A new planning rule was proposed on December 6, 2002 (67 FR 72770).

In addition, interim final rules extending the transition from the 1982 rule to the 2000 rule were published May 17, 2001 (66 FR 27552) and May 20, 2002 (67 FR 35431). The second rule allowed Forest Service managers to elect to continue preparing plan amendments and revisions under the 1982 rule until a new final rule was adopted. An interim final rule was published September 10, 2003 (68 FR 53294) extending the date project decisions must conform to provisions of the 2000 rule until a new rule is promulgated. Finally, an interpretive rule was published September 29, 2004 (69 FR 58055) to clarify the intent of the transition section of the 2000 rule regarding the consideration of the best available science to inform project decisionmaking. The 2004 interpretive rule also explicitly states that the 1982 rule is not in effect. Accordingly, no 1982 regulations apply to project decisions.

The final 2005 rule was published January 5, 2005 (70 FR 1022). Shortly thereafter, Citizens for Better Forestry and others challenged it in Federal district court. In an order dated March 30, 2007, the United States District Court for Northern California enjoined the Department from putting into effect and using the 2005 rule pending additional steps to comply with the court's opinion for APA, ESA, and NEPA (*Citizens for Better Forestry* v. *USDA,* 481 F. Supp. 2d 1059 (N.D. Cal. 2007)). The court concluded,

> [T]he agency must provide notice and comment on the 2005 Rule as required by the APA since the court concludes the rule was not a 'logical outgrowth' of the 2002 proposed rule. Additionally, because the 2005 Rule may significantly affect the quality of the human environment under NEPA, and because it may affect listed species and their habitat under ESA, the agency must conduct further analysis and evaluation of the impact of the 2005 Rule in accordance with those statutes.

(*Citizens for Better Forestry* v. *USDA*, 481 F. Supp. 1059, 1100 (N.D. Cal. 2007))

Purpose and Need for the National Forest System Land Management Planning Rule

The final rule's purpose is two-fold. The primary purpose is to improve on the 2000 rule by providing a planning process that is readily understood, is within the Agency's capability to carry out, is consistent with the capabilities of NFS lands, recognizes the strategic programmatic nature of planning, and meets the intent of the NFMA, while making cost effective and efficient use of resources allocated to the Agency for land management planning. This rule is needed to address the limitations of the 2000 rule that were identified in the April 2001 ''NFMA Planning Rule Review.''

This action's second purpose is in response to the court order in *Citizens for Better Forestry* v. *USDA* that enjoined the 2005 rule. The EIS supporting this ROD documents the analysis and evaluation of the impact of the rule in accord with the NEPA.

Based on the results of the aforementioned reviews, principles, and practical considerations, there is a need for a planning rule that:

- Contains clear and readily understood requirements;
- Makes efficient use of agency staff and collaborative efforts;
- Establishes a planning process that can be conducted within agency planning budgets;
- Provides for diversity of plant and animal species, consistent with capabilities of NFS lands;
- Requires analyses that are within the Agency's capability to conduct;
- Recognizes the strategic nature of land management plans;
- Considers best available science;
- Requires public involvement in development of a monitoring strategy, taking into account key social, economic and ecological performance measures and provides the responsible official sufficient discretion to decide how much information is needed;
- Promotes the use of adaptive management;
- Involves the public;
- Guides sustainable management; and
- Complies with applicable laws, regulations, and policies.

Public Involvement on the Proposed Rule

• *How Was Public Involvement Used in the Rulemaking Process?*

A notice of intent to prepare an EIS was published in the **Federal Register** on May 11, 2007 (72 FR 26775) with a public comment period ending June 11, 2007. The notice stated the Agency was considering reinstituting planning direction like that from the 2005 rule and specifically requested public comments on the nature and scope of environmental, social, and economic issues that should be analyzed in the EIS. Because of the extensive public comment already received on the 2005 rule, the planning directives, and the Agency categorical exclusion for land management planning, no public meetings were held for the scoping.

The Agency received a little over 800 responses. Responses included advocacy for a particular planning rule, as well as suggestions for analyses to conduct, issues to consider, alternatives to the proposed action, and calls for compliance with laws and regulations.

Some responses raised specific issues with the proposed action while others raised broader points of debate with management of the national forest system (NFS). Some respondents suggested alternative processes for promulgating a planning rule or alternative purposes for the NFS. Besides considering comments received during the scoping period, the Forest Service reviewed the court's opinion on the 2005 rule in *Citizens for Better Forestry* v. *USDA* and comments previously collected during promulgation of the 2005 rule (70 FR 1022, Jan. 5, 2005), agency planning directives (72 FR 4478, Jan. 31, 2007; 71 FR 5124, Jan. 31, 2006), and the Forest Service's categorical exclusion for land management planning (71 FR 75481, Dec. 15, 2006).

• *What General Issues Were Identified Regarding the Proposed Rule and Draft Environmental Impact Statement?*

Based on comments and the aforementioned review, an interdisciplinary team identified a list of issues to address.

• Diversity of Plant and Animal Communities.
• Timber Management Requirements of 16 U.S.C. 1604(g).
• Identification of Lands Not Suited for Timber Production (16 U.S.C. 1604(k)).
• Standards and Prohibitions.
• Environmental Impact Statement.
• Best Available Science and Land Management Plans.
• Management Requirements.

These issues are described in more detail later in this ROD.

The proposed rule was published on August 23, 2007 (72 FR 48514), and the notice of availability for the supporting draft EIS was published in the **Federal Register** on August 31, 2007 (72 FR 50368). A copy of the proposed rule and the draft EIS have been available on the World Wide Web/Internet at *http://www.fs.fed.us/emc/nfma/2007_planning_rule.html* since August 16, 2007. The proposed action and preferred alternative identified in both documents was the 2005 rule, as amended. Public comments were requested on both the proposed rule and the draft EIS. The comment period for both documents ended on October 22, 2007. The notice of availability of the final EIS was published in the **Federal Register** on February 15, 2008 (73 FR 8869).

The Forest Service received 79,562 responses. Of these, about 78,500 are form letters. The remaining letters consist of original responses or form letters with added original text. Some respondents focused their remarks on provisions of the proposed rule, others concentrated on the alternatives and analyses in the draft EIS and many comments applied to both documents.

Comments received on the proposed rule and draft EIS were consistent with, and often reiterated, the comments received during scoping. These comments played a key role in the decisions made in this ROD.

Alternatives Considered

The Agency fully developed six alternatives, and considered seven alternatives that were eliminated from detailed study (40 CFR 1502.14(A)). Alternatives considered in detail are summarized below. Seven additional alternatives (F–L) were considered but eliminated from detailed study because they did not meet some aspects of the purpose and need. More discussion about the eliminated alternatives can be found in chapter 2 of the EIS.

• *What Alternatives Were Considered by the Agency?*

Alternative A (2005 rule). This alternative is the proposed action as originally published as a proposed rule on January 5, 2005, and amended on March 3, 2006, with an updated effective date and transition period date set out at section 219.14. Alternative A was the preferred alternative in the draft EIS. This alternative was slightly modified in response to public comments on the draft EIS. Details of this proposed rule are in appendix A of the EIS.

The proposed rule describes the NFS land management planning framework; sets up requirements for sustaining social, economic, and ecological systems; and gives directions for developing, amending, revising, and monitoring land management plans. It also clarifies that land management plans under the proposed rule, absent rare circumstances, are strategic, and are one stage in an adaptive management cycle of planning for management of NFS lands. The intended effects of the proposed rule are to strengthen the role of science in planning; to strengthen collaborative relationships with the public and other governmental entities; to reaffirm the principle of sustainable management consistent with the MUSYA and other authorities; to establish an environmental management system (EMS) for each NFS unit; and to streamline and improve the planning process by increasing adaptability to changes in social, economic, and environmental conditions. Under this alternative, approval of a plan, plan amendment, or plan revision would be done in accord with the Forest Service NEPA procedures. It would be possible for one unit to approve a plan, plan amendment, or plan revision with a categorical exclusion (CE), a second unit to use an environmental assessment (EA), and a third unit might use an EIS depending on the nature of the decisions made in each respective plan approval.

Alternative B (2000 rule). The 2000 rule at 36 CFR part 219 as amended is the no action alternative. Although an interim final rule allowed responsible officials to use the 1982 rule procedures for planning until a new final rule is adopted (67 FR 35434), this alternative assumes that responsible officials have been using the 2000 rule procedures.

This rule would guide development, revision, and amendment of land management plans for the NFS and to a certain extent, guide decisions for projects and activities as well. It describes the framework for NFS land and natural resource planning; reaffirms sustainability as the goal for NFS planning and management; sets up requirements for the carrying out, monitoring, evaluating, amending, and revising of land management plans. The intended effects of the rule are to strengthen and clarify the role of science in planning; to strengthen collaborative relationships with the public and other government entities, to simplify, clarify, and otherwise improve the planning process; and to reduce burdensome and costly procedural requirements. Plan revisions would require an EIS while plan amendments would follow agency NEPA procedures, which prescribe the appropriate level of NEPA documentation based on the significance of effects. The 2000 rule, as amended, is found in appendix B of the EIS.

Alternative C (1982 rule). Under this alternative, the 1982 rule at 36 CFR part 219, as it existed before promulgation of the 2000 rule, would guide development, revision, and amendment of land management plans for the NFS. This rule requires integration of planning for national forests and grasslands, including the planning for timber, range, fish, wildlife, water, wilderness, and recreation resources. It includes resource protection activities such as fire management and the use of minerals and other resources. This rule also established requirements for plan and animal diversity such as providing habitat to ensure viable populations of native and desired non-native vertebrate species and identifying and monitoring populations of management indicator species. Case law has applied the monitoring of management indicator species population trends to projects and activities. Plan revisions and significant amendments would require an EIS while non-significant plan amendments would follow agency NEPA procedures, which prescribe the appropriate level of NEPA documentation based on the significance of effects. The 1982 rule, as amended, is in appendix C of the EIS.

Alternative D. This alternative is the same as the proposed action (alternative A) but without either the environmental management system (EMS) requirements or references to EMS at section 219.5 in the proposed action. The EMS would not be part of the plan set of documents. Setting up an EMS would not be required before plan approval, and an EMS would not mark the end of the transition period.

Alternative E. Alternative E is the same as the proposed action (alternative A) but modified by (1) removing EMS requirements and all references to EMS, (2) adding standards as a plan component, (3) adding more direction for identifying lands suitable for timber production and timber harvest, and (4) adding various timber management requirements (16 U.S.C. 1604(g)) and limitations on timber removal (16 U.S.C. 1611) from the NFMA.

Alternative M. This alternative is the preferred alternative in the final EIS. Alternative M is the same as alternative E except that it requires an EMS and it places requirements for long-term sustained-yield capacity and culmination of mean annual increment in agency directives.

Alternative M directs the Chief to establish direction for EMS in the Forest Service directives. The directives will formally establish national guidance, instructions, objectives, policies, and responsibilities leading to conformance with International Organization for Standardization (ISO) and adopted by the American National Standards Institute (ANSI) as ''ISO 14001:2004(E) Environmental Management Systems—Requirements With Guidance for Use.'' The ISO 14001 is presently available for a fee from the ANSI Web site at *http://webstore.ansi.org/ansidocstore/default.asp.*

Under Alternative M, the EMS scope is changed so that the responsible official is the person authorized to identify and establish the scope and environmental aspects of the EMS, based on the national EMS and ISO 14001, with consideration of the unit's capability, needs, and suitability. The detailed procedures to establish scope and environmental aspects are being developed in a national technical guide and the Forest Service Directives System.

Alternative M allows a responsible official to conform to a multi-unit, regional, or national level EMS as an alternative to establishing an EMS for a specific unit of the NFS. The responsible official will have the responsibility to deal with local concerns in the EMS. The unit EMS will provide the opportunity either to conclude that the higher level EMS adequately considers and addresses locally identified scope and significant environmental aspects, or to address project-specific impacts associated with the significant environmental aspects. The complete details for how the Agency will do this are being developed in a national technical guide and the Forest Service Directives System. This guidance is planned for release during fiscal year 2008.

Alternative M does not require an EMS prior to approving a plan, plan revision, or plan amendment. However, it does provide that no project or activity approved under a plan developed, amended, or revised under the requirements of this subpart may be implemented until the responsible official establishes an EMS or the responsible official conforms to a multi-unit, regional, or national level EMS. Furthermore, alternative M has several additional minor changes described in the final EIS.

- *What Is the Environmentally Preferable Alternative?*

The Department has identified two environmentally preferable alternatives, alternative B and alternative M. They are identified as environmentally preferred for different reasons. It should be noted that the presence or absence of EMS in the rule wording of these two alternatives is not a factor in their identification as environmentally preferable because the Agency will establish an EMS regardless of the alternative selected. The Agency fully intends to comply with Executive Order 13423—Strengthening Federal Environmental, Energy, and Transportation Management by implementing an EMS. In alternative B, all Agency direction concerning EMS would come from Agency directives. In alternative M, Agency direction concerning EMS would come from the planning rule and from Agency directives.

Alternative B: Alternative B is one of two environmentally preferable alternatives. Although neither of the environmentally preferable alternatives has direct environmental effects, the procedural requirements of alternative B provide more surety that explicit environmental protections will be set up during land management planning. For example, alternative B requires the setting up of a national science advisory board and the possible setting up of regional advisory boards. It calls for use of broad-scale analyses to set the context for decisionmaking and specific actions for coordination and interaction with other Federal agencies, State and local governments, American Indian Tribes and Alaska Native Corporations, interested individuals and organizations. Alternative B calls for providing for species viability and requiring that the planning process includes development and analysis of information about a specified list of ecosystem and diversity components. The same factors making alternative B one of the environmentally preferable alternatives makes it unworkable. As previously described, alternative B's requirements are so prescriptive they cannot be done within agency resources. The cost and complexity of carrying out alternative B were major factors in the Department's decision to develop a new planning rule and in the decision not to select alternative B in this ROD.

Alternative M: Alternative M is the other environmentally preferable alternative. The rule contains substantive requirements for protecting important resources such as soil, water, wildlife habitat, and aesthetics. It requires NFS lands contribute to the sustainability of ecosystems within the capability of the land, and requires species-specific plan components be developed in situations where broader ecosystem diversity components might not meet the habitat needs of threatened and endangered species, species-of-concern, and species-of-interest. The Forest Service directives provide substantial additional guidance aimed at ensuring resource protection and restoration. Another reason for identifying alternative M as an environmentally preferable alternative is the streamlined planning process it engenders will allow units of the NFS to respond more quickly to new information or changed conditions. The flexibility to respond quickly might, in some situations, allow the Agency to better mitigate or avoid threats to national forest resources by allowing variances or amendments to plans to occur without the delay caused by time-consuming NEPA procedures. This flexibility contributed to the decision to select alternative M.

- *Decision and Rationale*

Decision

Alternative M is selected as the final rule. This decision is based on the Environmental Impact Statement—National Forest System Land Management Planning, USDA Forest Service, 2008, and its supporting record. This decision is not subject to Forest Service appeal regulations.

Public comment on the proposed action in the draft EIS (alternative A) supported some modifications of the proposed rule. The Department reviewed and considered these comments, in consultation with Agency managers, and concluded the rule could be improved if some suggested changes were incorporated. Many suggested modifications contributed to the development of alternative M in the final EIS.

Rationale for the Decision

The following paragraphs describe a process of elimination for selecting alternative M, by first discussing the alternative's responsiveness to the purpose and need and then each alternative's responsiveness to significant issues identified through public comments.

• Response to Purpose and Need

Alternatives A, D, and E, and M meet the purpose and need for action previously described in this document. In contrast, alternatives B and C do not meet the purpose and need for action.

Alternative B, the 2000 rule, was not selected because it does not meet the purpose and need for action. The 2001 NFMA Planning Rule Review and the subsequent 2002 business model workshop identified a number of shortcomings with the 2000 rule and these shortcomings constitute a large part of the purpose and need for action. This alternative is identified as the no action alternative in the EIS.

First, alternative B does not meet the purpose and need for a rule to have clear and readily understood requirements. This rule has both definitions and analytical requirements that are unclear and complex, and, therefore, subject to inconsistent implementation across the Agency. Second, alternative B does not meet the need for a rule that makes efficient use of agency staff and collaborative efforts. This alternative includes unnecessarily detailed procedural requirements for scientific peer reviews, broad-scale assessments, monitoring, and science advisory boards. These detailed analysis requirements would cause land management plan revisions to take an expected 6 years to complete. Although this rule requires public involvement, it would be difficult for members of the public to remain engaged in such a protracted process and even agency staff turnover would likely interrupt such a long process. With a 6-year revision process, approximately 48 plans would be in some stage of revision during a 15-year cycle. Funding this many simultaneous revisions would likely exceed the Agency's budget—failing to meet another part of the purpose and need to establish a planning process that can be conducted within agency planning budgets. The monitoring requirements in alternative B are overly prescriptive and do not provide the responsible official sufficient discretion to decide how much information is needed—contrary to the purpose and need to establish monitoring requirements that provide the responsible official sufficient discretion to decide how much information is needed.

Alternative C, the 1982 rule, was also not selected because it does not meet the purpose and need for action. It should be noted that normally an action alternative would not be studied in detail if it does not fully meet the purpose and need. However, the Agency is in litigation. The plaintiffs argue that the 1982 rule, not the 2000 rule, is in effect as a result of the court's injunction of the 2005 rule. Because the proposal is to revise an existing rule, taking no action would entail continuing under the existing rule. Whether one believes the 2000 rule or the 1982 rule is the existing rule or ''no action alternative,'' both have been considered. Furthermore, all but one of the issues concerning the proposed action is based on the public's many years of experience with the 1982 rule. Accordingly, the 1982 rule provides a useful basis for comparison of the alternatives.

Alternative C, like alternative B, does not meet the need to make efficient use of agency staff and collaborative efforts because of the detailed analysis requirements, including benchmarks that would cause land management plan revisions to take an average of 5 years to complete. Because of the this long planning period, Alternative C has the same problems with the public remaining involved, agency staff changes, and exceeding the Agency's budget as Alternative B has. Approximately 40 plans would be in some stage of revision during a 15-year cycle. Funding this many simultaneous revisions would likely exceed the Agency's budget—failing to meet another part of the purpose and need to establish a planning process that can be conducted within Agency planning budgets. Alternative C does not meet the purpose and need to provide for diversity of plant and animal species consistent with capabilities of NFS lands. The requirements in alternative C to maintain viable populations of native and desired non-native vertebrate species do not recognize the limitations of suitability and capability of the specific land area and are a technical impossibility given that the cause of the decline of some species is outside the Agency's control. Further, the requirement to monitor management indicator species (MIS) populations at the plan and project level has proved difficult.

With alternatives B and C eliminated, the remaining four alternatives, A, D, E, and M, were compared with respect to the issues identified from public comments.

• Response to the Issue of Diversity of Plant and Animal Communities

Concerns were expressed that the proposed rule procedures for diversity weaken protection for fish and wildlife species because the rule does not include the requirement for managing habitat to maintain viable populations.

The NFMA requires the planning rule to specify guidelines that provide for diversity of plant and animal communities based on the suitability and capability of the specific land area in order to meet multiple-use objectives and provide, where appropriate, to the degree practicable, for steps to be taken to preserve the diversity of tree species (16 U.S.C. 1604(g)(3)(B)). Although providing a mandate of viability is within this authority, NFMA does not mandate viability of species. Rather, species diversity appropriate to the area covered by a plan is NFMA's goal. Further, viability would place an impractical burden on the Agency.

The view held by some, that there must be 100 percent certainty that species viability will be maintained, is a technical impossibility given that the cause of the decline of some species is outside the Agency's control. For example, viability of some species on NFS lands might not be achievable because of species-specific distribution patterns (such as a species on the extreme and fluctuating edge of its natural range), or when the reasons for species decline are due to factors outside the Agency's control (such as habitat alteration in South America causing decline of some neotropical birds), or when the land lacks the capability to support species (such as a drought affecting fish habitat). Moreover, the number of recognized species present on the units of the NFS is very large. It is clearly impractical to analyze all native and desirable non-native vertebrate species, and previous attempts to analyze the full suite of species by groups, surrogates, and representatives has had mixed success in practice. Furthermore, focus on the viability requirement has often diverted attention and resources away from an ecosystem approach to land management that, in the Department's view, is the most efficient and effective way to manage for the broadest range of species with the limited resources available for the task.

Alternatives A, D, E, and M meet the NFMA diversity requirements by establishing a goal of providing appropriate ecological conditions for plant and animal communities,

requiring a framework for sustaining these conditions in plans, and giving the responsible official discretion to decide what plan components should be included in the plan for species. Alternatives A, D, E, and M require the planning directives for sustaining ecological systems to be consistent with the concepts of ecosystem diversity and species diversity. In addition, guidance is currently included in the Forest Service Directives System for providing self-sustaining populations of species-of-concern. A self-sustaining population is one that is sufficiently abundant and has appropriate population characteristics to provide for its persistence over many generations. Species-of-concern are species for which the responsible official determines that management actions might be needed to prevent listing under the ESA. This issue did not result in the further elimination of the remaining four alternatives, A, D, E, and M.

• Response to the Issue of Requiring an Environmental Impact Statement

There is concern that by not requiring an EIS for plan development and plan revision, the proposed rule would not require consideration of a full range of planning alternatives, would reduce public involvement in land management planning, and would eliminate consideration of cumulative effects or leave such consideration to project-level analyses.

Alternatives A, D, E, and M allow an iterative approach to development of a plan, plan amendment, or plan revision. Under these alternatives, a plan is developed as various options for plan components are merged, narrowed, adjusted, added, and eliminated during successive rounds of the collaborative process. The term ''option'' is used to differentiate it from ''alternative'' as used in the NEPA process. The difference between alternatives and options is that options are developed to address specific issues or groups of issues. For example, a collaborative process to develop a proposal for a plan revision or plan amendment might identify differences of opinion concerning desired conditions for an area with respect to mechanized use. Options for mechanized use would then be developed. Where there are points of agreement on other desired conditions, there would be no need to develop options. An option could also be developed as a complete alternative to a proposal. If the responsible official determines the plan revision or amendment can be categorically excluded from documentation in an EA or EIS, no alternatives would be developed. If further NEPA analysis and documentation are required, appropriate alternatives would be developed from the options.

The difference in public participation between previous planning rules and alternatives A, D, E, and M is whether public participation occurs inside or outside the NEPA procedures. As discussed in the EIS, public involvement requirements in these alternative rules exceed those required for an EIS under NEPA. Under these alternatives, the responsible official must provide opportunities for the public, Federal, State, and local agencies, and Tribal governments to collaborate and participate openly and meaningfully in the planning process. Specifically, as part of plan development, plan amendment, and plan revision, the responsible official must involve the public in developing and updating a comprehensive evaluation report, establishing the components of a plan, and designing the monitoring program. Public notice must also be provided at initiation of plan development, revision, or amendment. Plan development, plan revision, and plan amendment are subject to a 90-day comment period and a 30-day objection period. Public notice must also be provided at the point of approval. These public involvement requirements would apply even if a land management plan decision is categorically excluded from further analysis and documentation in an EA or EIS.

In contrast, plan development and revision under the 1982 rule involving an EIS required public notice at initiation of plan development or revision, a minimum three-month public comment period for draft plans and draft EISs, public notice in a record of decision at the point of approval, and an administrative appeal process.

Experience in planning processes under the 2005 rule has shown that the collaborative process is very effective and successful in engaging the public. Alternatives A, D, E, and M all share the same requirements for public involvement as the 2005 rule.

Throughout 28 years of land management planning, the Agency has learned that tiering to the cumulative effects analysis in a plan EIS did not provide nearly as much useful information at the project or activity level as the Agency had expected. The effects analyses in plan EISs were often too general to meet analytical needs for projects and activities. Meaningful cumulative effects analyses cannot be conducted until project design and location are known or at least reasonably foreseeable. Plan-level analysis would, however, evaluate existing conditions and broad trends at the geographic scale of the planning area. The Department believes these rules provide for the development and consideration of planning alternatives with much more robust public participation than previously afforded. The Department also believes that analysis of current conditions and trends required by these rules constitutes an appropriate evaluation of broader scale settings and influences that merit recognition in the planning process. Cumulative effects analysis at the project scale will continue when designs and locations are at least reasonably foreseeable. These issues did not result in the further elimination of the remaining four alternatives, A, D, E, and M.

• Response to the Issue of Best Available Science

There was a concern the proposed rule requiring the responsible official only to take into account the best available science (sec. 219.11) weakens the consideration of science, while the 2000 rule required the responsible official to ensure the plan was consistent with the best available science. Respondents said the planning rule should ensure plans are consistent with best available science.

The Department believes it is essential that land management plans be based on current, relevant science. Public comment on the EIS clearly showed strong support for incorporating science into the planning process. The Department believes alternatives A, D, E, and M are equally responsive to the desire to increase effective use of relevant science in the planning process. These alternatives have requirements to document how science was considered and that science was appropriately interpreted and applied. Further, these alternatives allow the responsible official to use independent peer review, science advisory boards, and other review methods. Alternative M differs slightly from alternatives A, D, and E because the detailed procedural requirements to address risks and uncertainties are currently in Agency directives instead of the rule.

The words ''take into account'' were used in the proposed action (alternative A) and alternatives D, E, and M instead of the words of the 2000 rule, which used ''consistent with'' because ''take into account'' better expresses that formal science is just one source of information for the responsible official and only one aspect of decisionmaking. When making decisions, the responsible

official also considers public input, competing use demands, budget projections, and many other factors as well as science. The Department believes that this wording gives clearer and stronger direction as to what is expected of the responsible official in developing the plan document or set of documents and in considering the best available science.

This issue did not result in the further elimination of the remaining four alternatives, A, D, E, and M.

• Response to the Issue of Management Requirements

There is a concern the proposed planning rule does not include minimum specific management requirements as the 1982 rule did at section 219.27, and that the lack of management requirements in the planning rule would reduce environmental protections resulting in significant environmental impacts including reduced environmental protection in project design and implementation.

The Department believes that less specific planning guidance is needed after decades of experience implementing NFMA. The proposed planning rule (alternative A) and alternatives D, E, and M provide a flexible process that can be applied to issues associated with local conditions and experience with implementing individual plans. The minimum specific management requirements in the 1982 rule are not required by NFMA—perhaps with good reason. The Department believes it is important not to include overly prescriptive requirements in a planning rule that unnecessarily limit a responsible official's discretion to develop, revise, or amend a land management plan tailored to local conditions.

There has always been a tension between providing needed detailed direction in a planning rule and discretion of the responsible official. Project and activity decisions by a responsible official are not only constrained and guided by a large body of law, regulation, and policy; they are also guided by public participation and administrative oversight. Public participation plays an important role in identifying unintended consequences of a proposed action. Additionally, administrative oversight conducted through management reviews, and the Agency's appeals and objections processes provide an additional check on a responsible official's exercise of discretion. Because every issue cannot be identified and dealt with in advance for every situation, the Department must rely on the judgment of the responsible official to make decisions based on laws, regulation, policy, sound science, public participation, and oversight.

This issue did not result in the further elimination of the remaining four alternatives, A, D, E, and M.

• Response to the Issue of Timber Management Requirements of 16 U.S.C. 1604(g)

Concerns were expressed that the proposed rule guidance for timber resource management (sec. 219.12(b)(2)) was inadequate because it did not include the specificity of the 1982 rule. Further, some respondents believe the timber management requirements from NFMA are legally required to be in the regulations.

The Department believes alternatives A, D, E, and M all meet the requirements of NFMA at section 1604(g). The difference among alternatives with respect to this issue is whether the requirements will be in the rule or in the Forest Service directives. The Department believes timber management using good land stewardship practices will occur regardless of which approach is taken. Moreover, the Department believes the wording in the proposed rule (alternative A) meets the NFMA requirement in 16 U.S.C. 1604(g) by directing the Chief of the Forest Service to include the timber management requirements of section 1604(g) in the Forest Service Directives System. However, the Department also understands and respects the view that if the requirements are in the rule, they are afforded greater visibility. Accordingly, to eliminate this potential controversy, alternatives E and M were selected over alternatives A and D, because they include the NFMA timber management requirements (16 U.S.C. 1604(g)) where alternatives A and D do not.

• Response to the Issue of Identification of Lands Not Suited for Timber Production (16 U.S.C. 1604(k))

Concerns were expressed that the proposed rule guidance for identifying lands not suited for timber production (sec. 219.12(a)(2)) was insufficient because it did not include the detail that was in earlier rules and that not including this detail represented an elimination of resource protection standards.

The Department believes alternatives A, D, E, and M all meet the requirements of NFMA at section 1604(k). The difference among alternatives with respect to this issue is whether the requirements would be in the rule or in the Forest Service directives. The Department believes the identification of lands not suited for timber production will properly occur pursuant to section 1604(k) regardless of which approach is taken. Both the proposed rule (alternative A) and alternative D provide a framework for consideration of lands not suited for timber production, but rely on the Forest Service directives as a means to provide further detail to accomplish this requirement. Alternatives E and M include additional procedural requirements to identify land as not suitable for timber production where technology is not available for conducting timber harvest without causing irreversible damage to soil, slope, or other watershed conditions or substantial and permanent impairment of the productivity of the land, and where there is no reasonable assurance that such lands can be adequately restocked within 5 years after final regeneration harvest. As in the discussion of timber management requirements, the Department understands and respects the view that if detailed guidance for identifying lands not suited for timber production is in the rule, it is afforded greater visibility. Accordingly, to eliminate this potential controversy, alternatives E and M were selected over alternatives A and D, because they include such detailed guidance in the rule.

• Response to the Issue of Standards and Prohibitions

Concerns were expressed that the proposed rule limited land management plans to strategic plan components and did not specifically allow more conventional components, such as standards, that could regulate or limit uses and activities.

The Department believes plans are more effective if they include more detailed descriptions of desired conditions, rather than long lists of prohibitive standards or guidelines developed in an attempt to anticipate and address every possible future project or activity and the potential effects such projects could cause. For example, standards could have been included that precluded vegetation treatment during certain months or for a buffer for activities near the nest sites of birds sensitive to disturbance during nesting. However, topography, vegetation density, or other factors may render such prohibitions inadequate or unduly restrictive in specific situations. A thorough desired condition description of what a species needs is often more useful than a long list of prohibitions.

In reviewing public comments, the Department concluded that the argument for excluding standards from a planning rule so as not to limit a responsible official's discretion cuts both ways. Just as standards and prohibitions in a planning rule limit a responsible official's discretion, not allowing them also limits a responsible official's discretion in developing, revising, and amending a land management plan. Recognizing the ecological, economic, and social diversity across the NFS, there might be circumstances where certain standards or prohibitions would be appropriately included in a land management plan. Accordingly, the Department believes it is important to explicitly allow a responsible official the flexibility to include standards and prohibitions in a land management plan.

Alternatives E and M were selected over alternatives, A and D, because alternatives E and M explicitly allow standards and prohibitions to be included in land management plans.

• Consideration of Environmental Management System (EMS)

After considering the preceding issues, alternatives E and M remained for selection. EMS was included in the proposed action because the Department is committed to complying with Executive Order 13423, requiring the head of each Federal agency to put into effect an EMS as the primary management approach for addressing environmental aspects of internal agency operations and activities, and because the Department believes it will enhance adaptive planning and should be part of the land management framework. The Department is committed to conform to ISO 14001. The Department is required by E.O. 13423 and instructions for implementing the E.O. to implement an EMS by December 2008.

The Forest Service has a long history of adaptive management and the concepts associated with EMSs. The ''Plan-Do-Check-Act'' cycle of an EMS can be found in plan implementation strategies designed for forest plans developed under the 1982 rule. The concept of adaptive management has been a component of Forest Service planning rules dating back to 1995 where it was identified as a cornerstone of ecosystem management. Although systems were developed to provide an adaptive approach to management, in the press of business the ''Check—Act'' portions of the system were only sporadically accomplished. The Department considered relying solely on Agency directives to implement the Executive order for land management planning—as reflected in alternatives B, C, D, and E, but believes incorporating EMS in the planning rule better integrates adaptive management and EMS in Forest Service culture and land management planning practices.

The proposed rule (alternative A) requires the responsible official to establish an EMS for each unit of the NFS, the scope of which was to include at least the land management planning process. Each unit revising a plan using the proposed rule procedures would be required to have an EMS in place before approval of the revised plan. Plan amendments could not be made after the end of the 3-year transition period if an EMS was not in place. These requirements generated management concerns during initial efforts to create unit EMSs because: (1) EMS was perceived to be redundant to existing management systems; (2) wording about the scope of the EMS covering the land management planning process was too broad, resulting in inconsistent application; (3) requiring an EMS prior to approving a revision was perceived as an obstacle to completing the planning process, that is, it is more logical to revise plans first, then use an EMS to manage environmental aspects under the new plan rather than to prepare an EMS before or concurrent with planning; (4) the proposed rule requirement at section 219.5 to create an EMS on every administrative unit of the NFS did not permit the Agency to realize efficiencies by establishing a multi-unit, regional, or national level EMS; and (5) independently developing of the ISO 14001 protocol from the start for every administrative unit proved to be too costly and unwieldy.

Although the Agency recognizes concerns about potential redundancy in management systems due to EMS requirements, the Agency is committed to integrating EMS with existing management systems or modifying existing systems to be consistent with EMS. Alternative M was crafted to address these remaining management concerns. First, regarding redundancy with existing agency processes, this alternative would allow the Chief of the Forest Service to establish detailed procedures in the directives to create an EMS that reduces or eliminates redundancy. Second, the wording stating that the scope of an EMS will include the entire planning process described in the rule is removed in alternative M and replaced with wording to the effect that the scope will include environmental aspects as determined by the responsible official in a unit EMS or established in a multi-unit, regional, or national level EMS. The EMS scope is changed so that the responsible official is the person authorized to identify and establish the scope and environmental aspects of the EMS, based on the national EMS and ISO 14001, with consideration of the unit's capability, needs, and suitability. The detailed procedures to establish scope and environmental aspects are being developed in a national technical guide and the Forest Service directives. Third, alternative M does not require an EMS to be in place before developing or revising a plan. It does, however, state that no project or activity approved under a plan developed, amended, or revised under the rule may be implemented until the responsible official either establishes a unit EMS or conforms to a multi-unit, regional, or national level EMS. The Department believes this change from the proposed rule will improve integration of EMS into the plan development and revision process by allowing plan components to inform the identification of environmental aspects in an EMS. Fourth, alternative M allows a responsible official to conform to a multi-unit, regional, or national level EMS as an alternative to establishing an EMS for a specific unit of the NFS. The responsible official will have the responsibility to deal with local concerns in the EMS. The unit EMS will provide the opportunity either to conclude that the higher level EMS adequately considers and addresses locally identified scope and significant environmental aspects, or to address project-specific impacts associated with the significant environmental aspects. Administrative units that do not have an EMS will satisfy the requirement in section 219.5 after they develop an EMS that conforms with the national EMS and either adds environmental aspects and components under the local focus area or determines that the national EMS focus areas sufficiently identify and deal with the local unit's environmental aspects and components. The Department believes this modification will provide the Forest Service flexibility to determine the appropriate scope of an EMS. Finally, alternative M directs the Chief to establish direction for EMS in the Forest Service directives. The directives will formally establish national guidance, instructions, objectives, policies, and responsibilities leading to conformance with ISO 14001. By letter of direction from the Chief and through its directives, the Forest Service will implement a national EMS applicable to

all administrative units of the Forest Service.

Implementation of the EMS will be governed by the Forest Service directives. A technical guide is being prepared for use by EMS managers and an EMS handbook is being developed for use in the field. The scope of the EMS will address the goals of EO 13423, nationally identified land management environment aspects, and as appropriate, local significant environmental aspects.

The EMS will be designed to conform to the ISO 14001 standard, as required by section 219.5(c). Audit procedures will be established in the technical guide or directives. Conformance will be determined by the procedures detailed in the directives for the EMS. A ''non-conformity'' identified by a management review or audit under these EMS procedures is not a failure to conform to the ISO 14001 standard, per section 219.5(c), but part of the Plan-Do-Check-Act (P–D–C–A) cycle of continuous improvement that makes up the ISO conformant EMS. A non-conformity would be followed up with preventive or corrective action which leads to continuous improvement in environmental performance. Such a ''non-conformity'' is a normal part of the EMS P–D–C–A process and does not constitute a failure to conform to the ISO 14001 standard as required by section 219.5(c).

Alternative M resulted as the final land management planning rule not only through a reasoned choice among the alternatives, but also through an iterative approach to alternative development by which the Agency modified the proposed action and alternatives and developed an additional alternative in response to public comments. Details concerning each change between the proposed rule (alternative A) and the final rule (alternative M) are discussed in the section-by-section portion of this preamble.

• *What Specific Comments Were Raised on the Proposed Rule and What Changes Were Made in Response to Those Comments?*

Each comment received consideration in the development of the final rule. A response to comments on the draft EIS and the proposed rule may be found in the response to comments appendix of the EIS located on the World Wide Web/Internet (see **ADDRESSES**).

General Comments

The Department received the following comments not specifically tied to a particular section of the 2007 proposed rule.

Comment: Guidance for management of individual resources and uses. Some respondents commented on a variety of issues such as access, air, conversion of hardwood stands to pine monoculture, soil and water, carbon storage, climate change, developed recreation, dispersed recreation, eco-tourism, ecosystem services, grazing, habitat for threatened and endangered species, habitat for fish and wildlife, heritage resources, historic range of variability, hunting, late successional reserves, mining, non-Federal lands, off-road vehicle use, oil and gas development, old growth forest conservation, parks and preserves, preservation, recreation, resilience to disturbance, restoration, rural communities, soil conservation, timber harvest, water quality, watersheds, weed-free ecosystems, wilderness, and wildlife. The respondents wanted issues about the management of these resources discussed in the final rule or for the rule to require management toward a particular emphasis, such as protection or conservation of biodiversity, ecosystem integrity, ecosystem sustainability, grizzly bears, heritage resources, national forests, old growth, opportunities for education and scientific research, primitive recreational opportunities, roadless area protection, roadless characteristics, scenery, soils, undisturbed forests, viable populations of wildlife, watershed protection, wilderness, wildlife, or the production of timber, minerals, oil and gas, or other commodities. One respondent suggested the final rule should incorporate specific, enforceable timetables for the processing of right-of-way applications for wireless communications infrastructure and encourage the infrastructure on NFS lands. The Virginia Department of Environmental Quality supplied suggestions to protect water quality and other resources for national forests in the State of Virginia.

Response: The Agency agrees the issues raised are important. However, the final rule is intended to provide overall direction for how plans are developed, revised, and amended. The final rule does not provide direction for the management of any specific resource. This type of guidance is properly found in the plans themselves or in the subsequent decisions regarding projects and activities on a particular national forest, grassland, prairie, or other comparable administrative unit. Those communities, groups, or persons interested in these important issues can influence plan components and monitoring programs by becoming involved in planning efforts throughout the process, including the development and monitoring of the plan, as well as the development of proposed projects and activities under the plan. The Agency is committed to reducing threats to the Nation's forests and grasslands, as discussed in the USDA Forest Service Strategic Plan: FY 2007–2012. These threats include: (1) The risk of loss from catastrophic wildland fire caused by hazardous fuel buildup; (2) the introduction and spread of invasive species; (3) the loss of open space and resulting fragmentation of forests and grasslands that impair ecosystem function; and (4) unmanaged recreation, particularly the unmanaged use of off-highway vehicles. The Agency forwarded comments from the State of Virginia to the staff of the George Washington and Jefferson National Forests.

Comment: Climate change. Some respondents felt it was imperative the rule contain specific direction to address the problem of global warming and climate change. They suggested the rule should set forth a strategy and require plans that anticipate and provide for the likely effects of climate change and result in NFS lands being managed to reduce global warming. Some believe that the proposed rule would lead to an increase in livestock grazing, oil and gas development, and timber harvest, and that these increases would add to problems of global warming.

Response: The Agency agrees the problem of climate change is important. The land management planning process is informed by both a comprehensive evaluation and the best available science to evaluate the situation of the individual forest unit with respect to climate change. The final rule is intended to guide how plans are developed, revised, and amended. It does not provide direction that is more appropriately addressed in the plans themselves, or in the subsequent decisions about projects and activities on a particular national forest, grassland, prairie, or other comparable administrative unit. These activities would be guided by land management plans and subsequent and separate decisions made at the project level with appropriate NEPA documents. Because it is not possible to estimate these subsequent and separate decisions, there is no basis to conclude that the rule will lead to increases or decreases in grazing, oil and gas, timber harvest, or global warming.

Comment: Timeline for developing the rule. Several respondents said the Agency rushed the rulemaking and EIS

process. Others requested a rule be developed for the benefit of all citizens and not be unduly influenced by politics and special interests. Other respondents expressed support for the proposed rule and urged the Forest Service to finalize the rule as soon as possible so ongoing plan revisions can be completed.

Response: The process of developing a new planning rule has been ongoing since recommendations for more effective planning were documented in the 1989 ''Synthesis of the Critique of Land Management Planning.'' The final rule was developed considering recommendations of the 1999 Committee of Scientists and public and internal input on the 2000 and the 2005 rules. Although every effort has been made to promptly complete rulemaking tasks, the Agency believes there has been ample time for public comment, agency analysis of alternatives, and ultimately the selection of this final rule. The final rule was developed to ensure efficient and effective land use planning procedures and was not unduly influenced by political considerations.

Comment: Consultation with a committee of scientists. Several respondents were concerned there was no consultation with a committee of scientists in developing the proposed rule. Some said the 1999 Committee of Scientists should be reconvened, others said previous recommendations of the past Committee should be reviewed.

Response: The National Forest Management Act (NFMA) does not require a committee of scientists for revision of the planning rule. Nonetheless, the Department based the final rule on the major recommendations from the 1999 Committee of Scientists report. Sustainability, public participation, adaptive management, monitoring and evaluation, the role of science, and the objection process, all concepts in the final rule, were recommendations of that report. The Department realizes that scientific knowledge will continue to expand. Therefore, the responsible official must take into account the best available science when plans are developed, revised, or amended.

Comment: Compliance with the court decision enjoining the 2005 rule. Some respondents commented that because the proposed rule is identical to the enjoined 2005 rule, it does not comply with the Administrative Procedure Act (APA), National Environmental Policy Act (NEPA), Endangered Species Act (ESA), and other environmental laws. Some respondents disagreed with the reasoning of the district court in *Citizens for Better Forestry* v. *USDA* and were concerned that preparation of an EIS to adopt a planning rule may set precedent that in addition to the environmental analysis underlying the development of a categorical exclusion, a redundant EIS must be prepared to determine the effects of using the categorical exclusion.

Response: On March 30, 2007, the United States District Court for the Northern District of California in *Citizens for Better Forestry* v. *USDA,* 481 F. Supp 2d 1059 (N.D. Cal. 2007) enjoined the Agency from carrying out and using the 2005 rule until the Agency took certain additional steps concerning the APA, NEPA, and ESA. The Forest Service decided to undertake these processes to expedite much needed plan revisions and plan amendments.

The Department is committed to transparent rulemaking and public participation under the APA. In the final 2005 rule, the Department changed the provisions for timber management requirements, changed the provisions for making changes to the monitoring program, and added provisions for environmental management system (EMS). The court found that the Forest Service did not provide sufficient notice to the public of these changes to the 2005 rule such that the 2005 rule was not the logical outgrowth of the 2002 proposed rule. Therefore, the Agency provided notice and comment of the 2007 proposed rule (72 FR 48514, August 23, 2007) which included the final 2005 rule's provisions for timber management, monitoring, and EMS.

Regarding NEPA, the court found the 2005 rule did not fit the Agency's categorical exclusion for servicewide administrative procedures. The categorical exclusion for administrative procedures was developed with public participation and the use of categorical exclusions is a recognized method for NEPA compliance. Under the court's order, further environmental analysis under NEPA was required. Accordingly, the Agency prepared a draft EIS on the proposed rule and a final EIS.

Finally, the court found the Agency was required to prepare a biological assessment or to consult on the impact of the 2005 rule under ESA. Based upon an analysis for the 2005 rule, the Agency had concluded that adoption of the 2005 rule alone would have no effect on listed species or critical habitat. The court, however, found that conclusion unlawful absent some type of consultation with the United States Fish and Wildlife Service (USFWS) and the National Oceanic and Atmospheric Administration (NOAA) Fisheries or a biological assessment. Accordingly, the Agency has prepared a biological assessment, which concludes that the final rule, in itself, will have no effect on threatened, endangered, or proposed species or to designated or proposed critical habitat. Since initiating the development of the current proposed planning rule, the Forest Service has consulted with NOAA Fisheries and USFWS to discuss the programmatic nature of the planning rule, to explain the Forest Service's tiered decisionmaking framework (regulation, land management plan, and project) and to consider the potential of the 2008 planning rule to affect threatened, endangered and proposed species, and designated and proposed critical habitat. We concluded this consultation by reaching a ''no effect'' determination. The Forest Service was aware that USFWS and NOAA Fisheries had agreed with the Forest Service's similar ''no effect'' determination for the 2000 planning rule. However, the Forest Service ultimately concluded that, because our ''no effect'' determination fulfilled the consultation requirement, it was not necessary to submit this biological assessment to the NOAA Fisheries or USFWS seeking agreement with our finding.

The APA notice and comment opportunity, the EIS, and the preparation of the biological assessment fully address the procedural defects identified by the district court. The court did not require any substantive changes in the 2005 rule.

Comment: Compliance with the Multiple-Use, Sustained-Yield Act, and other laws governing the Forest Service. Some respondents commented on whether the proposed rule complies with laws affecting the Agency, including the MUSYA, NFMA, NEPA, Federal Land Policy and Management Act (FLPMA), Forest and Rangeland Renewable Resource Planning Act (RPA), ESA, Telecommunication Act of 1996, and applicable State laws, including best management practices, providing environmental safeguards and public involvement.

Response: All alternatives are faithful to compliance with all laws governing the Forest Service, including applicable State laws. NFMA requires the use of the MUSYA to provide the substantive basis for forest planning. As used in the rule, sustainability embodies these congressional mandates, including the requirements of FLPMA, RPA, and other laws. The interrelated and interdependent elements of sustainability are social, economic, and ecological as described in section 219.10. The final rule sets the stage for

a planning process that can be responsive to the desires and needs of present and future generations of Americans, for the multiple uses of NFS lands. The final rule does not make choices among the multiple uses; it describes the processes by which those choices will be made as a preliminary step during development of plans. The plans developed provide guidance for future projects and activities.

Moreover, an EIS has been prepared for the rule under the requirements of NEPA, and the Forest Service has reached a ''no effect'' determination under the ESA after preparing a biological assessment. Since initiating the development of the current proposed planning rule, the Forest Service has consulted with NOAA Fisheries and USFWS to discuss the programmatic nature of the planning rule, to explain the Forest Service's tiered decisionmaking framework (regulation, land management plan, and project) and to consider the potential of the 2008 planning rule to affect threatened, endangered and proposed species, and designated and proposed critical habitat. We concluded this consultation by reaching a ''no effect'' determination. The Forest Service was aware that USFWS and NOAA Fisheries had agreed with the Forest Service's similar ''no effect'' determination for the 2000 planning rule. However, the Forest Service ultimately concluded that, because our ''no effect'' determination fulfilled the consultation requirement, it was not necessary to submit this biological assessment to NOAA Fisheries or USFWS seeking agreement with our finding.

Comment: Placing procedures in directives rather than the rule. Some respondents commented the proposed rule does not meet all requirements of NFMA, such as provisions for determining timber harvest levels, identification of lands not suitable for timber production, use of the clearcutting harvest system, and providing for a diversity of plant and animal communities based on the suitability and capability of the land. They also expressed concerns that carrying out these requirements through the Agency's Directives System, rather than the plan rule itself, would not meet NFMA's mandatory and enforceable requirements, because the requirements would no longer have the force and effect of law. Other respondents said NFMA requirements have the force and effect of law, and if the Agency does not have mandatory requirements in regulations, a responsible official could end up violating NFMA and a lawsuit could shut down the national forest and perhaps the entire NFS. Respondents noted that directives do not require a mandatory public comment and agency response as is required through the regulatory process provided in the APA (5 U.S.C. 551); therefore, changes could be made to the directives without public input.

Response: The Agency is committed to meeting all the requirements of NFMA for all projects. Individual projects must meet NFMA's requirements for soil and water protection, restocking, restrictions on the use of clearcutting, esthetic quality, and so forth, regardless of whether those requirements are set out in regulation or agency directives.

The Agency believes the NFMA requirement that the planning regulation ''shall include, but not be limited to * * * specifying guidelines for land management plans developed to achieve the goals of the Program which'' [provide for diversity, ensure timber harvest will only occur if certain conditions are met, etc.] affords the Agency discretion to provide policy guidance either through regulations or directives (16 U.S.C. 1604(g)). Directives are available at *http://www.fs.fed.us/im/directives*.

In keeping with the strategic and adaptive nature of planning, the Agency is striving to make rulemaking more strategic and adaptive. Therefore, many procedural and technical details have been moved to the Forest Service Directive System (Forest Service directives). Forest Service directives are the primary basis for the Forest Service's internal management of all its programs and the primary source of administrative direction to Forest Service employees. The FSM contains legal authorities, objectives, policies, responsibilities, instructions, and guidance needed, on a continuing basis, by Forest Service line officers and primary staff to plan and execute programs and activities. The FSH is the principal source of specialized guidance and instruction for carrying out the policies, objectives, and responsibilities in the FSM.

Furthermore, the Agency requires that Federal, State, and local governments and the public have adequate notice and opportunity to comment on the formulation of standards, criteria, and guidelines applicable to land management planning when substantial public interest or controversy concerning a directive can be expected. For example, in the March 23, 2005, **Federal Register** (70 FR 14637), the Agency gave notice and requested public comment concerning issuance of interim directives related to carrying out the 2005 rule. The issuance of the final directives and response to comments received was published on January 31, 2006 (71 FR 5124).

A similar process will be done for directives carrying out the final planning rule. The directives for land management planning are composed of two manual chapters and nine handbook chapters. Manual chapters FSM 1900—Planning—Chapter Zero Code, and FSM Chapter 1920—Land Management Planning. FSM 1900 will need to be amended to update a few definitions. FSM 1920 will need updating to reflect the final rule for timber management requirements. FSH 1909.12 is composed of ten chapters as follows: Chapter—Zero Code, Chapter 10—Land Management Plan, Chapter 20—The Adaptive Planning Process, Chapter 30—Public Participation and Collaboration, Chapter 40—Science and Sustainability, Chapter 50—Objection Process, Chapter 60—Forest Vegetation Resource Planning, Chapter 70—Wilderness Evaluation, Chapter 80—Wild and Scenic River Evaluation, and Chapter 90—References. Chapters 10, 20, 60, and 90 will need updating to reflect the final rule. The changes to the final rule do not directly affect chapters Zero Code, 30, 40, 50, 70, and 80 of the handbook. However, the Agency has received comments on the existing directives and will take a comprehensive look at these directives to see if improvements can be made.

Although directives have been held not subject to judicial enforcement, (*Western Radio Services Co., inc.* v. *Espy,* 79 F 3d 896 (9th Cir. 1996)), they are enforced in the Forest Service. The Agency has a variety of methods for determining whether policy is being put into practice. First, the public involvement process allows for direct input into the planning process and management decisions on-the-ground. This local collaboration serves as an important check on agency practices. Second, the Agency has administrative appeals and objections processes through which the public can raise concerns about projects and land management plans. Third, the Forest Service conducts regular management reviews designed to assess to what degree the Agency is complying with rules and policies.

The Department also understands and respects the view expressed in a number of public comments that if certain requirements are in the rule, they are afforded greater visibility. In response to these comments, the Department has included the NFMA timber management requirements (16 U.S.C. 1604(g)) and detailed requirements for identifying

lands not suited for timber production (16 U.S.C. 1604(k)) in the final rule.

Comment: Compliance with the ESA. Some respondents raised concerns the proposed rule, without a strong viability or ecological sustainability requirement, does not ensure protection of federally-listed threatened or endangered species (such as the Canada lynx), will not help with their recovery, and will not forestall the listing of other species. Some stated that if the needs of these species are not met through a meaningful NFMA process, they will have to be met through an ESA process, thereby requiring greater application of the ESA to future project operations.

Response: The final rule is intended to provide a framework to contribute to sustaining native ecological systems by providing appropriate ecological conditions to support diversity of native plant and animal species in the plan area. Plan components establish a framework to provide the characteristics of ecosystem diversity in the plan area. Plans are to include provisions in plan components that the responsible official determines are needed to provide appropriate ecological conditions or protective measures for specified threatened and endangered species, consistent with limits of agency authorities, the capability of the plan area, and multiple-use objectives (219.10(b)(2)).

Under the ESA, the Agency has responsibilities to insure its actions do not jeopardize the continued existence of threatened and endangered species, or destroy or adversely modify habitat designated as critical habitat for such species. This is done where applicable when the Forest Service is proposing to take a particular action, through the use of ESA section 7(a)(2) consultation with the USFWS and NOAA Fisheries on potential effects of agency proposals to such species and to designated critical habitat. The Agency also coordinates with the USFWS and NOAA Fisheries under ESA section 7(a)(1) to carry out programs and activities for the conservation of endangered and threatened species and the ecosystems on which they depend.

Comment: Consistency with the intent of Congress as expressed in the Appeals Reform Act (ARA). One respondent asserted that the use of a predecisional objection process for plans rather than a post-decisional appeal process runs counter to the intent of Congress when they passed the Appeals Reform Act (ARA). This respondent believes that, although the ARA addresses only project-level appeals, Congress intended to leave unaffected the forest plan appeal process that was then in place.

Response: There is nothing in the Appeals Reform Act or its legislative history that would indicate Congress had any intent of addressing appeals processes other than those for ''proposed actions of the Forest Service concerning projects and activities implementing land and resource management plans.'' On the other hand, NFMA only requires ''public participation in the development, review, and revision of land management plans'' without specifying any post-decision review (16 U.S.C. 1604(d)). The Department believes the proposed predecisional objection process provides an opportunity for public concerns to be reviewed at a higher administrative level using a process that is more collaborative and less confrontational. The predecisional objection process provides an opportunity to make needed or appropriate adjustments to a plan before it is approved. The Agency's experience with post-plan decision appeals is that it is difficult to make needed changes. Often a separate amendment process must be carried out to respond to an appeal.

Comment: Integration of Minerals Management. Some respondents raised concerns the proposed rule does not ensure integration of mineral and energy resource development with the management of renewable resources. They believe without specific procedures for integration, the Agency will not meet its obligations under the Mining and Minerals Policy Act, Forest Service Minerals Program Policy, and the Forest Service Energy Implementation Plan.

Response: Increased production and transmission of energy and mineral resources in a safe and environmentally sound way is essential to the well-being of the American people. Like other agencies, the Forest Service is charged to take appropriate actions, to the extent consistent with applicable law, to expedite projects that will increase the production, transmission, or conservation of energy and mineral resources. In most instances, the Agency meets this responsibility by assuring that mineral activities on NFS lands are conducted in a way that minimizes environmental impacts on the renewable surface resources as directed by the MUSYA, NFMA, and various other statutes. Management responsibility for non-renewable, subsurface mineral resources primarily rests with the Secretary of the Interior. Where applicable, plan components will be developed considering the various conditions and uses of each individual unit, including the mineral and energy resource and opportunities for development of that resource. Forest planning is one, but certainly not the only, means to integrate the exploration and development of mineral and energy resources with the use and protection of the various goods and services provided from the NFS.

Comment: Legal requirements. Several respondents commented that various laws have made changes to some legal requirements, which must be addressed in the rule. For example, the Alaska Native Interest Lands Conservation Act requirement under section 1326(b) that ''no further studies of Federal lands in the State of Alaska for the single purpose of considering the establishment of a conservation system unit, national recreation area, or for related or similar purposes shall be conducted unless authorized by this Act or by further Act of Congress.''

Response: Wording at section 219.7(a)(6)(ii) in the final rule accounts for such situations by stating that wilderness recommendations must be considered ''unless otherwise prohibited by law.'' Although this provision of the final rule discusses only wilderness recommendations, no planning actions will be taken if in conflict with Federal law.

Comment: Court oversight. Some respondents commented the proposed rule makes it more difficult to challenge agency decisions in court.

Response: With respect to concerns that Forest Service discretion may be unchecked, there has always been a tension between providing needed detailed direction in the planning rule and providing discretion for the responsible official. However, the decisions of the responsible official are constrained and guided by a large body of law, regulation, and policy, as well as public participation and oversight. Because every issue cannot be identified and dealt with in advance for every situation, the Forest Service must rely on the judgment of the responsible official to make decisions based on laws, regulation, policy, sound science, public participation, and oversight.

The Agency believes the final rule is fully compatible with the nature of forest planning as described by the U.S. Supreme Court in *Ohio Forestry* v. *Sierra Club 523 U.S. 726 (1998)* (Ohio Forestry). The Agency expects public oversight and legal review of planning, as well as an assessment of the environmental impacts of specific projects under NEPA, to occur under the final rule in accord with Ohio Forestry. As a general matter, and consistent with the Ohio Forestry decision, a plan by itself is not expected to be reviewable by

the courts at the time the plan is developed, revised, or amended. The Department does not believe this rule makes judicial review any harder to obtain than was the case in Ohio Forestry. When the Agency decides on a specific action, an aggrieved party will be able to challenge that action and, if appropriate, seek review of that part of the plan relevant to that action.

Comments in Response to Specific Sections

The following is a section-by-section discussion of comments received on specific sections of the proposed rule, the Agency's response, and a discussion on the differences between the 2007 proposed rule and the final rule and why the Department made the changes. The Agency ordered the rule sections from general to specific. The first section introduces the reader to what is covered in the final rule and acknowledges the Forest Service's multiple-use and sustained-yield mandate (remainder of sec. 219.1). Section 219.2 describes planning in general and the levels of planning in the Agency. Then, the final rule contains a general description of plans (sec. 219.3 and 219.4), a discussion of environmental management systems (sec. 219.5), followed by the specific plan requirements (sec. 219.6–219.16). Throughout the final rule minor edits have been made for clarity.

Section 219.1—Purpose and Applicability

This section introduces the reader to what is covered in the final rule, acknowledges the Forest Service's multiple-use and sustained-yield mandate, and directs the Chief of the Forest Service to establish planning procedures in the Forest Service directives. The Department retains the 2007 proposed rule wording in the final rule, with the minor change of replacing ''required components'' with ''plan components'' to be consistent with section 219.7.

Comment: Meaningful, definitive plans. Several respondents urged that regulations provide for meaningful plans that give the American people a good idea of how lands will be managed. These respondents stated plans should not be vague, but rather be a contract with the public about how lands and resources will be managed. To be definitive in this regard, the plans must have standards that require or prohibit certain activities, standards and guidelines for management areas, other items required by NFMA, and supported by an EIS. One respondent commended the intent of defining measurable objectives toward desired conditions along with a structure for monitoring and evaluation.

Response: The Department believes plans are more effective if they include more detailed descriptions of desired conditions, rather than long lists of prohibitive standards or guidelines developed in an attempt to anticipate and address every possible future project or activity and the potential effects such projects could cause. For example, standards could have been included that precluded vegetation treatment during certain months or for a buffer for activities near the nest sites of birds sensitive to disturbance during nesting. However, topography, vegetation density, or other factors may render such prohibitions inadequate or unduly restrictive in specific situations. A thorough desired condition description of what a species needs is often more useful than a long list of prohibitions.

In reviewing public comments, the Department concluded that the argument for excluding standards from a planning rule so as not to limit a responsible official's discretion cuts both ways. Just as standards and prohibitions in a planning rule limit a responsible official's discretion, not allowing them also limits a responsible official's discretion in developing, revising, and amending a land management plan. Recognizing the ecological, economic, and social diversity across the NFS, there might be circumstances where certain standards or prohibitions would be appropriately included in a land management plan. Accordingly, the final rule explicitly allows a responsible official the flexibility to include standards and prohibitions in a land management plan.

Comment: Desired conditions, modeling parameters, information gaps. Some respondents asked that the final rule identify parameters that would guide the development of vegetation simulation models; clarify how desired conditions guide a project level EIS or EA, and how information gaps would be rectified when existing science is lacking.

Response: As with many other procedures, those that would guide the development of vegetation simulation models are properly discussed in technical guides rather than the planning rule. This allows selected models to change as technology evolves. The final rule defines a consistent approach to analysis and evaluation at broad scales and the local level. The final rule at section 219.6(a) would require the responsible official to keep the plan set of documents up to date with evaluation reports to show changing conditions, science, and other relevant information.

Desired conditions under the final rule are the social, economic, and ecological attributes toward which land management under the plan will aspire. A plan's desired conditions will contribute to the purpose and need for action articulated in a project EA or EIS. Responsible officials propose to carry out various projects and activities designed to meet a particular purpose and need for action, which should move toward or maintain desired conditions and achieve objectives described in the plan. The comprehensive evaluation report under the final rule may describe the risks and uncertainties associated with carrying out management consistent with the plan. At the project stage, where gaps in information are apparent, the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of the NEPA at 40 CFR 1502.22 (incomplete or unavailable information) would be followed, and the Agency would acknowledge when information is lacking or either obtain it or

> the agency shall include within the environmental impact statement: (1) A statement that such information is incomplete or unavailable; (2) a statement of the relevance of the incomplete or unavailable information to evaluating reasonably foreseeable significant adverse impacts on the human environment; (3) a summary of existing credible scientific evidence which is relevant to evaluating the reasonably foreseeable significant adverse impacts on the human environment, and (4) the agency's evaluation of such impacts based upon theoretical approaches or research methods generally accepted in the scientific community. For the purposes of this section, ''reasonably foreseeable'' includes impacts which have catastrophic consequences, even if their probability of occurrence is low, provided that the analysis of the impacts is supported by credible scientific evidence, is not based on pure conjecture, and is within the rule of reason (40 CFR 1502.22).

Managers prioritize risks and develop strategies to control them. These strategies may include specific monitoring and evaluation to gather additional information.

Section 219.2—Levels of Planning and Planning Authority

This section describes planning in general, how planning occurs at many organizational levels and geographic areas in the Agency, and provides the basic authorities and direction for developing, amending, or revising a plan. The Department retains the 2007 proposed rule wording in the final rule.

Comment: Addressing statewide issues. One respondent discussed past difficulty resolving statewide issues under the 2005 rule, and expressed concern the proposed rule will have the same problems. Another respondent commented that some planning issues are best answered at the regional level.

Response: The final rule has provisions for plan development and or revision to occur at a multiple forest level (sec. 219.2(b)(2)). Under the 1982 rule, responsible officials have routinely coordinated planning across unit and regional boundaries and will continue to do so as plans are developed under the final rule. In addition, the final rule provides the option for higher-level officials to act as the responsible official for a plan, plan amendment, or plan revision across a number of plan areas when needed.

Comment: Levels of authority. Some respondents were concerned the further up the authority ladder a decision is made, the further it is removed from the local level, and there is excessive discretion and lack of accountability in the rule, including unrestricted license to amend plans through project decision-making in violation of the NFMA.

Response: In compliance with NFMA, the final rule establishes a planning rule as a broad framework where issues specific to a plan area can be identified and resolved in an efficient and reasonable way, where responsible officials and the public can be informed by the latest data and scientific assessments, and where the public participates collaboratively. Like the 2000 rule, the responsible official will typically be the forest supervisor under the final rule; not the regional forester as under the 1982 rule.

Regardless of the administrative level, the responsible official must develop, amend, or revise plans within the framework set out by the planning rule and is accountable for compliance with the planning rule and the multitude of relevant laws and policies. About project decisionmaking, the NFMA allows plans to ''be amended in any manner whatsoever after final adoption after public notice'' (16 U.S.C. 1604(f)(4)). Furthermore, the Agency has been doing project amendments under the 1982 rule since the 1980s.

Comment: Inconsistency between responsible officials. Several respondents said the proposed rule would guarantee inconsistent application across the Agency because it leaves virtually all definitional and methodological decisions to the responsible official. Moreover, several respondents said that the Agency needs to put an end to inconsistency that occurs between responsible officials.

Response: Responsible officials currently coordinate across unit boundaries and would continue to do so because the areas of analysis for evaluations described in sections 219.6, 219.7, and 219.10 would often extend beyond the unit's boundaries to adjacent or nearby NFS units. In addition, the final rule provides the option for higher-level officials to act as the responsible official for a plan, plan amendment, or plan revision across a number of plan areas when consistency is needed. The Forest Service already has directives which ensure consistency as needed for Tribal or public consultation or for social, economic, or ecological resource related issues. The final rule supplies discretion for the responsible official because the Agency believes that the responsible official is the person most familiar with the resources and the people on the unit and is usually the most appropriate person to make decisions affecting those lands.

Section 219.3—Nature of Planning and Land Management Plans

This section describes the nature of planning, and the force and effect of plans. The Department retains the 2007 proposed rule wording in the final rule.

Comment: Strategic nature of planning. Many respondents were concerned about the strategic nature of plans. Some respondents were concerned that if strategic plans do not create legal rights, then there is no need for projects to be consistent with the plan; a circumstance that would violate NFMA. Other respondents said that if plans do not control on-the-ground activities and are only ''aspirational,'' the plans become meaningless paper exercises. On the other hand, some respondents were concerned that plans were too restrictive because forest staff would refuse to consider activities not consistent with management zones designated in the plan. Some respondents disagreed that plans do not usually include final decisions approving projects. They cited decisions made in the recently issued plan revisions in the Forest Service's Southern region. Other respondents agree plans are strategic and are not actions that significantly impact the human environment and, therefore, that the preparation of an EIS is not required. Others stated that plans should focus on goals rather that specific prescriptions or prohibitions.

Response: The NFMA (16 U.S.C. 1604(i)) requires that resource plans, permits, contracts, and other instruments for the use and occupancy of NFS lands be consistent with land management plans. The final rule's approach to the project consistency requirement is consistent with the Supreme Court's observation of the characterization of plans in *Norton* v. *Southern Utah Wilderness Alliance,* 124 S. Ct. 2373 (2004), that ''land use plans are a preliminary step in the overall process of managing public lands —'designed to guide and control future management actions and the development of subsequent, more detailed and limited scope plans for resources and uses.' ''

An ''aspirational'' plan establishes a long-term management framework for NFS units. A framework is not a meaningless paper exercise. Within the framework, specific projects and activities are proposed, approved, and carried out depending on specific conditions and circumstances at the time of accomplishment. The final rule is consistent with the Supreme Court's description of plan decisions and the nature of plans in *Ohio Forestry* v. *Sierra Club* (523 U.S. 726, 737 (1998)). This ruling explains that plans are ''tools for agency planning and management.'' The court recognized that the provisions of such plans ''do not command anyone to do anything or to refrain from doing anything; they do not grant, withhold, or modify any formal legal license, power, or authority; they do not subject anyone to any civil or criminal liability: they create no legal rights or obligations.''

The use of a framework for identifying suitable uses has evolved. Determining suitable uses was often characterized in plans prepared under the 1982 rule as permanent restrictions on uses or permanent determinations as to which uses would be suitable in particular areas of the unit over the life of the plan. However, even under the 1982 rule, Forest Service staff realized these identifications were never permanent, unless they were a statutory designation by Congress. Section 219.8 of the final rule lists actions that must be taken if an existing or proposed project or activity is found to be inconsistent with the applicable plan.

Recent plan revisions for NFS's Southern region did include project and activity decisions, but those revisions were done under the 1982 rule. Project and activity decisions can be in a plan but would likely be rare exceptions under the strategic approach used for the final rule.

Section 219.4—National Environmental Policy Act Compliance

This section of the final rule describes how planning will comply with NEPA.

The Department retains the 2007 proposed rule wording in the final rule except for a change to paragraph (b). Within paragraph (b), the Department removed the wording about categorical exclusion so that it now says approval of a plan, plan amendment, or plan revision, under the authority of this subpart, will be done in accord with the Forest Service NEPA procedures. As categorical exclusions are part of those procedures, this is not a substantive change.

Comment: Plans as major Federal actions. Although some respondents supported categorically excluding land management plans from documentation in an EIS or EA, other respondents believed land management plans significantly affect the environment and are therefore, major Federal actions triggering the NEPA requirements for an EIS (40 CFR 1508.18). Some stated NEPA requirements for an EIS are triggered because land management plans are in the category of Federal actions that are described as ''formal plans'' in the Council on Environmental Quality (CEQ) regulations at 40 CFR 1508.18 (b)(2). Some respondents expressed the view that by determining the types of land uses that will occur in areas of a national forest, the Forest Service makes decisions in its land management plans that ultimately can result in significant effects even though the plans themselves may not approve specific projects or activities. Other respondents believed extraordinary circumstances in the plan area would always preclude the use of a categorical exclusion.

Response: CEQ regulations define ''major Federal action'' as including ''actions with effects that may be major'' and state, ''major reinforces but does not have a meaning independent of significantly'' (40 CFR 1508.18). The CEQ regulations state that Federal actions fall within several categories, one of which is the ''[a]doption of formal plans, such as official documents prepared or approved by Federal agencies which guide or prescribe alternative uses of Federal resources'' (40 CFR 1508.18). However, not all Federal actions are major Federal actions significantly affecting the quality of the human environment. Plans developed under the final rule would typically not approve projects and activities, or command anyone to refrain from undertaking projects and activities, or grant, withhold, or modify contracts, permits, or other formal legal instruments. Such plans have no independent environmental effects. Plan components would guide the design of projects and activities in the plan area. The environmental effects of proposed projects and activities will be analyzed under NEPA once they are proposed. Furthermore, the final rule does not preclude preparation of an EA or EIS for a land management plan where appropriate to the decisions being made in a plan approval.

The Forest Service conducted an analysis for categorically excluding land management plan decisions and published a proposed category for public comment in 2005 (70 FR 1062). The Agency's final category was published in the **Federal Register** on December 15, 2006 (71 FR 75481). The land management planning categorical exclusion states that a decision approving projects and activities, or that would command anyone to refrain from undertaking projects and activities, or that would grant, withhold, or modify contracts, permits, or other formal legal instruments are outside the scope of this category. Proposals outside the scope of the categorical exclusion must be documented in an EA or EIS. Accordingly, land management plans, depending on their content, can be subject to various levels of NEPA documentation.

The Department acknowledges that extraordinary circumstances can preclude the use of a categorical exclusion, but believes that, absent plan decisions with on-the-ground effects, extraordinary circumstances are not likely.

Forest Service NEPA procedures provide that a responsible official, when considering whether to rely upon a categorical exclusion must determine whether there are extraordinary circumstances, which would preclude the use of a categorical exclusion. The procedures describe resource conditions to be considered when determining whether there are extraordinary circumstances. The procedures make clear that ''The mere presence of one or more of these resource conditions does not preclude use of a categorical exclusion. It is (1) the existence of a cause-effect relationship between a proposed action and the potential effect on these resource conditions and (2) if such a relationship exists, the degree of the potential effect of a proposed action on these resource conditions that determines whether extraordinary circumstances exist.'' Although the responsible official must consider whether there are extraordinary circumstances precluding use of a categorical exclusion for a plan, the Department expects that typically the nature of the plan will be such that its potential effects on the resource conditions will not involve extraordinary circumstances.

Comment: Desired conditions as a final agency decision. Some respondents believe that the establishment in plans of desired conditions and general suitability determinations (sec. 219.7(a)(2)(iv)) for management areas are final agency actions that will preclude certain uses from occurring. They also note the preamble for the 2005 rule (70 FR 1031) admits the approval of a forest plan is a final agency decision.

Response: The Department agrees that the approval of a plan, plan amendment, or plan revision is a final agency action under CEQ regulations, and that such actions may have environmental effects in some extraordinary circumstances, such as when a plan amendment or revision includes final decision approving projects or activities.

As discussed at section 219.12 of the final rule, NFS lands are generally suitable for a variety of multiple uses, such as outdoor recreation, range, timber, watershed, and wildlife and fish purposes, and a plan could designate the same area as suitable for multiple uses which when any one is authorized, precludes other uses. Such identification is guidance for project and activity decisionmaking, is not a permanent land designation, and is subject to change through plan amendment or plan revision. Specific uses of specific areas are approved through project and activity decisionmaking. At the time of plan approval, the Forest Service does not typically have detailed information about what projects and activities will be proposed and approved over the life of the a plan, where they will be located, or how they will be designed. Under the final rule, plans will be strategic rather than prescriptive in nature, absent rare circumstances. Plans would describe the desired social, economic, and ecological conditions for a national forest, grassland, prairie, or other comparable administrative unit. Plan objectives, guidelines, suitable uses, and special area identifications would be designed to help achieve the desired conditions. None of the plan components are intended to directly dictate an on-the-ground decision that has impacts on the environment. Rather, they state guidance and goals to be considered in project and activity decisions.

Comment: Desired condition and suitability determinations as irretrievable and irreversible decisions: A respondent commented that plans make irretrievable and irreversible decisions because desired future

conditions require certain management and identifying a timber base assures that certain actions will occur and impacts will result. Another respondent commented that the zoning of certain forest lands in the plan has a direct impact on how national forests will be managed and what impacts will be acceptable.

Response: The identification of desired conditions in a plan will not require any activities to actually occur or describe the precise activities to be undertaken to bring a forest or grassland to those conditions. Although a statement of desired conditions will typically influence the choice and design of future proposed projects and activities in the plan area it does not by itself have any effects on the environment. Likewise identifying a particular area as suitable for timber production does not require or approve any projects or activities, command anyone to refrain from undertaking projects and activities, or grant, withhold, or modify contracts, permits, or other formal legal instruments. Nor does it mean that a particular set of management prescriptions will be the only set considered when future projects are proposed in that area.

Comment: Standards and guidelines as final agency decisions: A respondent stated that standards and guidelines ensure that protective or impacting activities will occur.

Response: Standards and guidelines provide constraints, information, and guidance that will be applied to future proposed projects or activities to contribute to achieving or maintaining desired conditions. Standards and guidelines may even determine whether a potential project is feasible. Furthermore, standards and guidelines will typically influence the design of proposals for future projects and activities in the plan area. The influence standards and guidelines have on the direct, indirect, and cumulative effects of future projects or activities are not known and cannot be meaningfully analyzed until such projects or activities are proposed by the Agency. If a plan standard or guideline were to approve projects and activities, or command anyone to refrain from undertaking projects and activities, or grant, withhold, or modify contracts, permits, or other formal legal instruments, such a plan component would be subject to appropriate NEPA analysis and documentation.

Comment: Roadless inventory, wilderness or wild and scenic rivers recommendations, and oil and gas leasing as final agency decisions. Some respondents did not agree that plans do not typically make final decisions subject to NEPA, citing the determination of roadless areas, recommendations for wilderness or wild and scenic rivers, and the decisions to open areas to oil and gas leasing. Other respondents agree with the Forest Service that plans do not approve or execute any particular action; that management is more dynamic when it is closest to the ground.

Response: The planning process includes inventories and analysis that provide information but this information is not a decision. Inventories identifying areas meeting certain criteria for potential wilderness areas are an example. Only the Congress can make the decision to designate wilderness or wild and scenic rivers. Unless otherwise provided by law, based on inventories and analysis, the responsible official will consider all NFS lands possessing wilderness characteristics for recommendation as potential wilderness areas during plan development or revision. Congress may consider recommendations in the plan, but has no obligation to designate wilderness consistent with the plan's recommendations. The final rule ensures that NEPA analysis would coincide with those stages in agency planning and decisionmaking likely to have a measurable effect on the human environment. If the Chief decides to forward preliminary recommendations of the forest supervisor to the Secretary, an applicable NEPA document shall accompany these recommendations.

If the responsible official proposes to determine what oil and gas lands are administratively available for oil and gas under 36 CFR 228.102(d), this would be a separate decision, which the plan may cross-reference. However, this is an activity decision under 36 CFR 228.102(d), this is not a plan decision or plan component.

Comment: Disclosure of the environmental effects of a plan. Many respondents were concerned that using a categorical exclusion instead of an EIS for land management planning eliminates disclosure of environmental effects of a land management plan. Some were concerned that without disclosure of environmental effects, scientists and the public would not have a basis for providing meaningful comments. Some respondents believed the proposed categorical exclusion would eliminate cumulative effects analysis of management activities across the NFS in violation of NEPA.

Response: A categorical exclusion is one method of complying with NEPA. A categorical exclusion represents a Forest Service determination that the actions encompassed by the category ''do not individually or cumulatively have a significant effect on the human environment'' (40 CFR 1508.4). Plans developed under the final rule would typically not include a decision approving projects and activities, nor that command anyone to refrain from undertaking projects and activities, nor that grant, withhold or modify contracts, permits, or other formal legal instruments. Plan components would provide guidance and a strategic framework-they would not compel changes to the existing environment. Achieving desired conditions depends on future management decisions. Thus, without a decision approving projects and activities, or that commands anyone to refrain from undertaking projects and activities, or that grants, withholds or modifies contracts, permits, or other formal legal instruments, the plan components would not be linked in a cause-effect relationship over time and within the geographic area to any resource. Therefore, such a plan would not have a significant effect on the quality of the human environment.

The final rule would provide for extensive analysis, as set out in section 219.6 and section 219.7. A comprehensive evaluation of current conditions and trends would be done for plan development and revision and updated at least every 5 years (sec. 219.6(a)(1)). This evaluation, along with information from annual evaluations and other sources, would be part of the continually updated plan documents or set of documents that would be considered in project analysis. These up-to-date plan documents or set of documents would provide a better context for project cumulative effects disclosures than previously provided by programmatic plan EISs under the 1982 rule; therefore, the Forest Service would make better informed management decisions at the time it decides to propose projects under the plan. However, the comprehensive evaluation report will not have a cumulative effects disclosure like the EISs under the 1982 rule had.

The Forest Service is required to address the cumulative effects of projects and activities. Those cumulative effects will be analyzed and disclosed at the time the projects and activities are proposed, which is the time when the Forest Service has a goal, is actively preparing to make a decision about one or more alternatives to achieve that goal, and the effects can be meaningfully evaluated (40 CFR 1508.23).

Comment: Plan alternatives. Several respondents commented that by not

using an EIS for land management planning, no alternatives will be considered other than the one proposed by the Forest Service. They were concerned this would preclude the consideration of alternatives proposed by the public. Some suggested that alternatives play an important role in educating the public about the possible outcomes for national forests and grasslands. Others believed evaluating alternatives allows Forest Service managers to make decisions that are more informed.

Response: With the 1982 rule, the Forest Service believed the most efficient planning approach was to integrate the rule's regulatory requirement to formulate alternatives to maximize net public benefit with the NEPA alternative requirement (i.e., 40 CFR 1502.14). However, the final rule would not require alternatives because it envisions an iterative approach to plan development, in a way that plan options are developed and narrowed successively (sec. 219.7(a)(7)). The Department recognizes that people have many different ideas about how NFS lands should be managed and agrees that the public should be involved in determining what the plan components should provide. Therefore, the final rule provides for participation and collaboration with the public at all stages of plan development, plan amendment, or plan revision. Under the final rule, the responsible official and the public may iteratively develop and review various options for plan components, including options offered by the public. Responsible officials and the public would work collaboratively to narrow the options for a proposed plan instead of focusing on distinct alternatives that would be carried through the entire process. The Forest Service developed this iterative option approach under the final rule to encourage people to work together, to understand each other's values and interests, and to find common solutions to the important and critical planning issues.

Comment: Efficiency of future project and activity decisionmaking. Some respondents believed categorically excluding land management plans will increase the analysis needed for project or activity decisions and therefore, reduce efficiency gained during the planning process. Some stated that without a plan EIS, cumulative effects and impacts to forest-wide resources would now have to be evaluated in each project decision.

Response: Inherent in these comments is the assumption that programmatic land management plan EISs consistently provided useful and up-to-date information for project or activity analysis including sufficient cumulative effects analysis for reasonably foreseeable projects and activities. After 28 years of NFMA planning experience, the Forest Service has determined that plan EIS cumulative and landscape-level effects analyses are mostly speculative and quickly out of date. Landscape conditions, social values, and budgets change between when a plan's effects analysis occurs and when most project and activity decisions are made. Large-scale disturbances, such as drought, insects and disease, fires, and hurricanes can dramatically and unexpectedly change conditions on hundreds to thousands of acres. Use of a plan area can change dramatically in a relatively short time, as has occurred with the increased numbers of off-highway vehicles in some areas or the listing of a species under the ESA. Hence, the Forest Service has found that a plan EIS typically does not provide useful, current information about potential direct, indirect, and cumulative impacts of project or activity proposals. Such effects will be better analyzed and disclosed when the Forest Service knows the proposal's design and the environmental conditions of the specific location.

Section 219.5—Environmental Management Systems

This section of the final rule describes environmental management systems (EMS) provisions. The EMS provisions will enhance the Agency's ability to monitor and adaptively respond to changes in the environmental aspects in its land management activities. The Department modified the wording of the proposed rule to (1) permit the Agency to establish a multi-unit, regional, or national level EMS; (2) clarify that the scope of an EMS will include land management environmental aspects as determined by the responsible official; and (3) add a requirement that no project or activity approved under a plan developed, amended, or revised may be implemented until the responsible official has established an EMS.

The Department decided to allow the responsible official to conform to a multi-unit, regional, or national level EMS because this modification will provide the Forest Service flexibility to determine the appropriate scope of an EMS and allow the Agency to set EMS procedures at the appropriate organizational level to improve environmental efficiency and effectiveness. The responsible official will have the responsibility to deal with local concerns in the EMS. The unit EMS will provide the opportunity either to conclude that the higher level EMS adequately considers and addresses locally identified scope and significant environmental aspects, or to address project-specific impacts associated with the significant environmental aspects. The complete details for how the Agency will do this are being developed in a national technical guide and the Forest Service directives.

The Department changed the scope of an EMS so that the responsible official is the person authorized to identify and establish the scope and environmental aspects of the EMS, based on the national EMS and ISO 14001, with consideration of the unit's capability, needs, and suitability. The detailed procedures to establish scope and environmental aspects are being developed in a national technical guide and the Forest Service Directives System which are planned for release in fiscal year 2008. The Department made this change because the wording about scope in the proposed rule was too broad to be effectively implemented.

The Department is requiring the Chief to establish direction for EMS in the Forest Service directives. The directives will formally establish national guidance, instructions, objectives, policies, and responsibilities leading to conformance with International Organization for Standardization (ISO) and adopted by the American National Standards Institute (ANSI) as ''ISO 14001:2004(E) Environmental Management Systems—Requirements with Guidance for Use.''

The Department decided to remove the requirement that an EMS be in place prior to developing or revising a plan. However, the Department added the requirement that no project or activity approved under a plan developed, amended, or revised under the rule may be implemented until the responsible official either establishes an EMS or conforms to a multi-unit, regional, or national level EMS. The Department believes this change from the proposed rule will improve integration of EMS into the plan development and revision process by allowing plan components to inform the identification of environmental aspects in an EMS.

Comment: Contribution of EMS to the planning process. Several respondents questioned the value of including EMS in the proposed rule. A respondent expressed the belief that EMS is voluntary for industry and not enforceable; however, incorporating it in the planning rule would give it the force of law against the Agency. One respondent noted that although the

effectiveness of monitoring should be tightly integrated into each forest plan, it can be done without a burdensome and impractical EMS. Other respondents said that the existing planning process has adequate requirements for adaptive management, and the requirement to develop an EMS is redundant. Another respondent found requiring EMS to be inconsistent with the proposed rule's intent to be strategic rather than prescriptive. Another respondent suggested the requirement for EMS be moved to the directives and expanded to provide guidance on its scope and use. Conversely, some respondents expressed support for including an EMS in the rule. Several respondents expressed the opinion that a strategic forest plan accompanied by an EMS was preferable to a prescriptive forest plan.

Response: EMS is based on a national standard and the procedures for enforcing it will be established in the technical guide and directives. The standard lays out management system elements. EMS can be applied to any organization that wants to use it, not just industry. The final rule requires the responsible official to establish an EMS or conform to multi-unit, regional, or national level EMS with a land management emphasis. By letter of direction from the Chief and through its directives, the Forest Service will implement a national EMS applicable to all administrative units of the Forest Service.

Implementation of the EMS will be governed by the Forest Service directives. A technical guide is being prepared for use by EMS managers and an EMS handbook is being developed for use in the field. The scope of the EMS will address the goals of EO 13423, nationally identified land management environment aspects, and as appropriate, local significant environmental aspects.

The EMS will be designed to conform to the ISO 14001 standard, as required by section 219.5(c). Audit procedures will be established in the technical guide or directives. Conformance will be determined by adherence to the procedures detailed in the directives for the EMS. A ''non-conformity'' identified by a management review or audit under these EMS procedures is not a failure to conform to the ISO 14001 standard, per section 219.5(c), but part of the ''Plan-Do-Check-Act'' (P–D–C–A) cycle of continuous improvement that makes up the ISO conformant EMS. A non-conformity would be followed up with preventive or corrective action which leads to continuous improvement in environmental performance. Such a ''non-conformity'' is a normal part of the EMS P–D–C–A process and does not constitute a failure to conform to the ISO 14001 standard as required by section 219.5(c).

Administrative units that do not have an EMS will satisfy the requirement in section 219.5 when they implement the national EMS and either add significant environmental aspects and components under the local focus area or determine that the national EMS significant environmental aspects sufficiently identify and deal with the local unit's concerns. The detailed procedures and requirements for a Forest Service EMS under section 219.5 are being developed in a national technical guide and the Forest Service directives.

Although the Department recognizes concerns about potential redundancy in management systems due to EMS requirements, the Department is committed to integrating EMS with existing management systems or modifying existing systems to be consistent with EMS. The Department believes incorporating EMS in the planning rule better integrates adaptive management and EMSs in Forest Service culture and land management planning practices. This will help the Agency apply the principles of adaptive management to Agency operations.

Comment: EMS design and purpose. Several respondents felt that the Agency needs to clarify the purpose and contents of its EMS. One respondent specifically asked for clarification on the sustainable consumption component of the national EMS framework and how the public can be involved in the development of a unit's EMS.

Response: The Forest Service is committed to use EMS as a national framework for adaptive management. Details on the requirements of EMS, including procedures for public involvement, will be placed in the Forest Service directives. The sustainable consumption focus area of the national EMS discusses the goals outlined in Executive Order 13423 ''Strengthening Federal Environmental, Energy and Transportation Management.''

Comment: Applicability of International Organization of Standardization (ISO) 14001. Some respondents expressed the view that the ISO 14001 was designed for businesses, corporations, and facilities that cause pollution and that it would be an awkward fit to natural resource management agencies.

Response: The ISO standard simply lays out management system elements. EMS can be applied to any organization that wants to use it, not just industry. The Forest Service will use the ISO 14001 elements as the framework for EMS development for two reasons. It is the most commonly used EMS model in the United States and around the world. This will make it easier to carry out and understand (internally and externally) because there is a significant knowledge base about ISO 14001. Second, the National Technology and Advancement Act of 1995 (NTAA) (Pub. L. 104–113) requires that Federal agencies use or adopt applicable national or international consensus standards wherever possible, in lieu of creating proprietary or unique standards. The NTAA's policy of encouraging Federal agencies to adopt tested and well-accepted standards, rather than reinventing-the-wheel, clearly applies to this situation where there is a ready-made international and national EMS consensus standard (through the American National Standards Institute) that has already been successfully carried out in the field.

The Agency's approach to EMS under the final rule incorporates lessons learned from the fiscal year (FY) 2006 EMS pilots. These pilots involved all Forest Service regions and 18 national forests and grasslands. The pilots revealed that a forest-by-forest approach to EMS: (1) Creates many redundancies, (2) burdens field units with unnecessarily duplicative work, (3) introduces inconsistencies, and (4) makes it difficult to assess regional and national trends emerging from EMS efforts because there is no standardization between units. Because of these problems, the Forest Service now proposes to develop a single, national EMS that will serve as the basis for environmental improvement on each unit of the NFS and as the basis for the EMS to be implemented on each unit. The national EMS will include three focus areas: *Sustainable consumption, land management,* and *local concerns.* The sustainable consumption focus area concentrates on the consumption of resources and related environmental impacts associated with the internal operations of the Forest Service. This focus area is the Agency's way to achieve the goals of Executive Order 13423, ''Strengthening Federal Environmental, Energy, and Transportation Management.'' The sustainable consumption focus area will apply to items such as increasing energy efficiency, reducing the use of petroleum in fleets, and improving waste prevention and recycling programs. The land management focus area of the national EMS will include land management activities applicable

to all national forests and grasslands. A review of the 2006 EMS pilot program and review of the Agency's Strategic Plan found each local unit EMS will at a minimum include: (1) Vegetation management, (2) wildland fire management, and (3) transportation system management as significant aspects. The activities covered under the sustainable consumption and the land management focus areas include aspects and components that will be discussed in a national level EMS. Therefore the change in the final rule at section 219.5 that allows the responsible official to conform to multi-unit, regional, or national level EMS will allow the responsible official to cover the sustainable consumption and land management focus areas. The uniform approach to sustainable consumption and land management aspects and components in the national EMS will enable the Forest Service to track progress in achieving the objectives of the Forest Service Strategic Plan and unit land management plans and supply a feedback loop that will help improve the Agency's response when goals and objectives are not being met. The local focus area allows local units to include aspects and components specific to an individual unit's environmental conditions and programs. Each Forest Service unit's implementation of the national EMS could differ with respect to the locally identified significant environmental aspects.

Several administrative units established EMSs as a part of the pilot effort before the Forest Service adopted a consistent national approach. Those administrative units' EMSs include locally unique environmental aspects and components as well as the environmental aspects and components they have in common with other units. Those common environmental aspects and components are similar to the environmental aspects and components that will be developed under the sustainable consumption and land management focus areas of the national EMS. Because an EMS includes procedures to add new requirements, these administrative units have procedures to transition to the requirements developed under the national EMS and they will subsequently conform to the national EMS. Therefore, the EMS requirement under section 219.5(d) is met for those units. Administrative units that do not have an EMS will satisfy the requirement in section 219.5 after they implement the national EMS and either add significant environmental aspects and components under the local focus area or determine that the national EMS significant environmental aspects sufficiently identify and deal with the local unit's concerns.

Comment: EMS as substitute for NEPA or NFMA requirements. Some respondents expressed the opinion that EMS appears to be an entirely inappropriate substitute for NEPA to advance the public's interest in protecting the environmental integrity of the national forests. Another respondent expressed the opinion that EMS should not be a replacement for the standards and limits required by NFMA.

Response: The final rule requires all forest plans to be consistent with NFMA requirements, and an EMS will not be a replacement for these requirements. The final rule also requires the responsible official to select the appropriate level of NEPA analysis. The Forest Service will apply EMS as a tool for monitoring and effective adaptive management. EMS is not an environmental ''analysis'' system and is not a substitute for appropriate NEPA analysis.

Section 219.6—Evaluations and Monitoring

This section specifies requirements for plan evaluation and plan monitoring. The Department retains the 2007 proposed rule wording in the final rule except for minor changes. In paragraph (a)(1), the Department added that a comprehensive evaluation report may be combined with other documents, including NEPA documents. This change to the provision about comprehensive evaluation was done to eliminate a perception among Forest Service managers that two documents may be required if an EA or an EIS were prepared. In paragraph (b)(2), the Department removed the provision requiring the monitoring program to provide for monitoring of multiple-use objectives because paragraph (b)(2) also requires the monitoring program provide for monitoring of ''the degree to * * * making progress toward * * * objectives for the plan,'' which includes multiple-use objectives. Because multiple-use objectives will still be monitored, this is not a substantive change.

In paragraph (b)(2), the Department changed the provision requiring the monitoring program to determine the effects of the various resource management activities within the plan area on the productivity of the land. The term ''productivity'' refers to all of the multiple uses, such as outdoor recreation, range, timber, watershed, and wildlife and fish. Use of this term is broader than just commercial uses. The Department changed the provision to require the monitoring program to provide for monitoring to assist in evaluating the effects of each management system to the end that it will not produce substantial and permanent impairment of the productivity of the land. The Department made this change in wording based on comments from Forest Service managers that the proposed rule wording was confusing. Therefore, the Department used the same words as NFMA at 16 U.S.C. 1604(g)(3)(C). The term ''management system'' in this provision means vegetation management system, such as, even-aged system, two-aged system, or uneven-aged system. Because the revised wording still carries out the intent of the NFMA, this is not a substantive change.

Because of a request by Alaska Native Corporations, the Department added the name Alaska Native Corporation to the list of possible partners for joint monitoring.

The final rule allows the monitoring program to be changed with administrative corrections and public notification, instead of amendments, to enable the Forest Service to implement improved techniques and eliminate those proven not to be effective, and account for unanticipated changes in conditions. Changes in a monitoring program will be reported annually, and the responsible official has flexibility to involve the public in a variety of ways in developing changes to the program.

Comment: Guidance or requirements for monitoring. A respondent commented that the proposed rule failed to provide any guidance on what or how to monitor and evaluate. The respondent said that adaptive management requires compatible or standardized information to allow managers to learn from current management and make appropriate modifications, but that the proposed rule does not require such a system or provide guidance in how to set up a successful monitoring system. The rule does not require monitoring of any specific resources or actions such as monitoring wildlife or fuels reduction projects. With no system in place, a forest manager could selectively monitor some resources and activities and ignore others.

Response: The Department agrees standardized information collection through monitoring is an important part of adaptive management. The final rule includes a core set of requirements for establishing a monitoring system. These

include that monitoring must provide for determining whether management systems are producing substantial and permanent impairment of the productivity of the land and the extent to which on-the-ground management is maintaining or making progress toward the desired conditions and objectives of the plan (sec. 219.6(b)(2)). There is further guidance that monitoring must be prepared with public participation and take into account key social, economic, and ecological performance measures, and best available science (sec. 219.6(b)(1)). The Forest Service Directives System and other technical guidance provide information on how to design and conduct a monitoring program.

Rather than impose through this planning rule a standardized list of resources or activities for monitoring, the Agency believes that monitoring needs are best determined for each individual unit. Requiring standard information to be collected on fuels may be a critical element to fire-prone forests, but it is not to wet forests where fire is a less important ecological process. The reality of limited financial and technical capabilities makes it particularly important that forest managers be allowed to develop a monitoring program appropriate for the information needs of each forest without the additional burden of providing standardized information of limited utility to some forests.

Comment: Need for wildlife monitoring. Several respondents stated wildlife monitoring must be done to ascertain the effects of projects on wildlife.

Response: The final rule establishes a process for developing, amending, and revising land management plans for the NFS (sec. 219.1(a)). If the responsible official determines that provisions in plan components, in addition to those required for ecosystem diversity are needed to provide appropriate ecological conditions for specific threatened and endangered species, species-of-concern, and species-of-interest, then the plan must include additional provisions for these species. The rule also requires plans to include monitoring of the degree to which on-the-ground management is maintaining or making progress toward the desired conditions and objectives for the plan. Accordingly, a forest plan's monitoring program would include monitoring of effects on wildlife where appropriate.

Comment: Monitoring detail in the rule. Some respondents were concerned that the proposed rule did not include requirements for detailed monitoring of objectives and standards.

Response: The rule requires a plan's monitoring program to take into account financial and technical capabilities, key social, economic, and ecological performance measures relevant to the plan area, and best available science in monitoring the degree to which on-the-ground management is maintaining or making progress toward the desired conditions and objectives for the plan. Because plan components such as desired conditions, objectives, and standards (if a plan includes them) will reflect management specific to a particular unit of the NFS, the plan's monitoring program will need to be tailored to that unit as well. By requiring a plan's monitoring program to focus on the achievement of desired conditions and objectives, the rule strikes a balance between providing needed detailed direction and discretion of the responsible official.

Comment: Collecting relevant and necessary information. Some respondents noted there is no process for assuring the Agency will collect relevant and necessary information. Permitting merely the use of available information (especially if no information is available) gives the Agency an excuse for not collecting the right monitoring information. One respondent said the proposed rule abdicates the Forest Service's responsibility to monitor species and perform population assessments, shifting that burden to the public, which will have little or no record of data from the Agency on which to rely.

Response: As described in section 219.6(b)(1) in the final rule, the monitoring program will be developed with public participation and will take into account the best available science. Section 219.6(a)(3) of the final rule requires an annual evaluation of monitoring information. These steps would help assure that the monitoring program gets the right information.

Comment: Need for evaluation of current conditions. Respondents stated it is imperative the Forest Service evaluate current conditions that resulted from past management decisions before making changes in management direction.

Response: Under the final rule baseline information would be collected as needed to establish trends for social, economic, and ecological sustainability. Section 219.6(a) of the final rule requires three types of evaluations. These include comprehensive evaluations for plan revisions that must be updated every 5 years (sec. 219.6(a)(1)), evaluation for a plan amendment (sec. 219.6(a)(2)), and annual evaluations of the monitoring information (sec. 219.6(a)(3)).

Comment: Monitoring of goals and objectives. Some respondents stated the lack of any requirements in the planning rule for meeting forest plan goals and objectives assures that any monitoring plan will be meaningless.

Response: The final rule provides for monitoring the degree to which management is making progress toward the desired conditions and objectives for the plan (sec. 219.6(b)). Section 219.6(a)(3) of the final rule calls for an annual evaluation to be made of this monitoring information. Under the final rule, if plan objectives are not realized due to budget constraints, changed conditions, or other reasons, the desired conditions may not be realized. If monitoring and evaluation indicates that certain objectives and/or desired conditions are not achievable, the responsible official would consider the need for a plan amendment or revision or may consider stepping up on-the-ground management to actually improve progress toward desired conditions and objectives.

Comment: Substantial changes in evaluation reports. A respondent was concerned that the term 'substantial changes in conditions and trends' as described in section 219.6(a)(1) was not defined and thus did not allow the public to review and understand what is expected in the updated comprehensive evaluation.

Response: Section 219.9(a) of the final rule requires public involvement in the updating of the comprehensive evaluation report. It is expected that the update of the comprehensive evaluation will involve a general review of relevant conditions and trends with emphasis on those whose changes that are considered substantial. Accordingly, the public will have an opportunity to tell the responsible official what they believe are substantial changes in conditions and trends.

Comment: Analysis for a project or activity should not be sufficient for a plan amendment. A respondent disagreed with the proposed rule at section 219.6(b)(2) that states that the analysis prepared for a project or activity satisfied requirements for an evaluation for an amendment. The concern is there would be no analysis to evaluate how an exception made for the project or activity will affect the plan.

Response: The project or activity analysis that satisfies the requirements for an evaluation report for a plan amendment that only applies to the project or activity decision must also meet the requirements in section 219.6(a) and section 219.6(a)(2). These

include an evaluation commensurate to the levels of risk or benefit associated with the nature and level of expected management in the plan area and an analysis of the issues relevant to the purposes of the amendment.

Section 219.7—Developing, Amending, or Revising a Plan

This section discusses plan components; planning authorities; planning process, including the process for review of areas with potential for wilderness recommendation; administrative corrections; plan document or set of documents; and the plan approval document. The Department retains the 2007 proposed rule wording in the final rule except for minor changes: In paragraph 219.7(a)(1), the Department changed the wording about EMS documents from ''documents relating to the EMS established for the unit'' to ''applicable EMS documents, if any.'' This change to the description of documents was made because the Forest Service will maintain separate records for EMS. Separate records are necessary because the responsible official may conform to multi-unit, regional, or national level EMS. In paragraph 219.7(a)(2)(iv), the Department added wording to acknowledge that the responsible official may identify an area as generally unsuitable for various uses. The Department added these words to avoid confusion. Some public comments indicated that identification of an area as generally not suitable for uses would be perceived as a final decision. Therefore the Department clarified its intent. The Department views this as an outgrowth of the proposed rule's suitability provisions and not a substantive change. In paragraph 219.7(a)(3) the Department added a paragraph to explicitly list standards as a possible plan component. As discussed in the decision and rationale section of this preamble, the Department added that standards may be included in a plan in response to public comments and the Agency's desire to include standards as a plan component when appropriate. This clarifies the Department's intent that standards are an option for the responsible official as described in the preamble to the proposed rule (72 FR 48528). This is not a substantive change because this option was available under the proposed rule and because this was considered in the range of alternatives in the EIS.

In paragraph 219.7(b)(4), the Department added wording to allow administrative corrections for projections of uses or activities in addition to timber management projections. This change was made at the request of Forest Service managers to allow planners to update projections of other uses besides timber to be updated. If the Forest Service is allowed to update timber projections, then updates should similarly be allowed for other resources. Because projections of use are not decisions, this is not a substantive change. In paragraph 219.7(c)(6), the Department added wording that if a plan approval document is the result of an EA or EIS process, the plan approval document would be done in accord with Forest Service NEPA procedures. This wording was added to ensure that a plan approval document in these circumstances would meet both the requirements of the final rule and agency NEPA procedures. This is not a substantive change as the addition ensures the planning rule is consistent with existing Forest Service NEPA procedures.

Section 219.7(b) provides for administrative corrections to include changes in the plan document or set of documents, except for substantive changes in the plan components. This is done to allow for continual inclusion of new science and other information into the plan document or set of documents. Changes to the plan document or set of documents may also occur when outdated documents are removed, for example, when a new inventory replaces an older one.

Comment: Triggering an amendment or revision. Some respondents stated concerns about how the proposed rule describes the way plan revisions will be triggered. One concern is the perception that the responsible official will have unfettered discretion to amend or revise the plan without any guidance as to what types of events would be rational for changing the plan. These respondents urge that the rule include a representative list of the general types of events that might trigger a plan amendment or revision. Some respondents urge that an EIS and public involvement be required when forest plans are changed.

Response: The final rule provides the responsible official discretion about whether to initiate a plan amendment or plan revision, subject to the NFMA requirement that the plan be revised at least every 15 years. The periodic evaluations required by the final rule would document current conditions and trends for social, economic, and ecological systems in the area of analysis (sec. 219.6(a)) and aid the responsible official in determining if a plan amendment or plan revision is needed and what issues need to be considered. The responsible official will be able to amend or revise the plan based on information obtained by monitoring and evaluation, as well as other factors. The Department believes that the efficiencies of the final rule would be reduced if the planning rule attempted to identify every specific event that must occur before a plan revision or plan amendment can be initiated.

Plan amendments prepared under the procedures described in the final rule will have a 90-day comment period and will have a 30-day objection opportunity. If a NEPA document is part of a plan development, plan amendment, or plan revision the NEPA document will be prepared in accord with Forest Service NEPA procedures.

Section 219.7(a)(2)(i)—Plan Components—Desired Conditions

Comment: Addressing elements of sustainability in desired conditions. Some respondents urged that the components of sustainability (social, economic, ecological) be given equal footing in the descriptions of desired conditions. They stated that very specific detailed descriptions are needed in order to establish meaningful objectives and without detailed desired condition descriptions, objectives will not be met.

Response: Under the final rule, desired conditions will be the social, economic, and ecological attributes toward which management of the land and resources of the plan area are to be directed. The Agency agrees that well defined desired condition descriptions are useful, because they provide a clear basis for project or activity design and are needed to effectively establish objectives.

Section 219.7(a)(2)(ii)—Plan Components—Objectives

Comment: Nature of objectives. One respondent expressed concern that objectives are described as aspirational rather than being defined as concrete, measurable, and time specific as in previous rules.

Response: Under the final rule, the objectives are measurable projections of time specific intended outcomes and are a means for measuring progress toward reaching desired conditions (sec. 219.7(a)(2)(ii)). These objectives can be thought of as a prospectus of anticipated outcomes, based on past performance and estimates of future trends. These objectives must be measurable, so progress toward attainment of desired conditions can be determined. Variation in accomplishing objectives would be expected due to changes in

environmental conditions, available budgets, and other factors.

Comment: Timber production objectives. Some respondents are concerned that if the timber sale program quantity (TSPQ) and the acres and volumes of projected management practices are objectives and the basis for achieving the desired conditions, then if the Agency does not meet these objectives the desired condition will never be achieved.

Response: We agree. Under the final rule, if plan objectives are not realized due to budget constraints, changed conditions, or other reasons, the desired conditions may not be realized. If monitoring and evaluation indicates that certain objectives and/or desired conditions are not achievable, the responsible official would consider the need for a plan amendment or revision or may consider stepping up on-the-ground management to actually improve progress toward desired conditions and objectives.

Section 219.7(a)(2)(iii)—Plan Components—Guidelines

Comment: Mandatory protections. Several respondents raised concerns because they felt the proposed rule removes mandatory protections for resources such as water and wildlife and removes the restraints on clearcutting that have been in place for over 25 years. Most of these respondents requested the final planning rule provide at least the minimum protections from the 1982 rule and these protections and those required by the NFMA not be weakened. Other respondents said the flexibility incorporated in the 2007 proposed rule better allows the Agency to carry out its mission and adapt to changing conditions. Other respondents are pleased the proposed rule featured the use of guidelines as opposed to standards.

Response: The final rule provides for inclusion of standards as a plan component (sec. 219.7(a)(3)). Standards are constraints on project and activity decisionmaking and may be established to help achieve the desired conditions and objectives of a plan and to comply with applicable laws, regulations, Executive orders, and agency decisions. When a plan contains standards, a project or activity must be designed in accord with the applicable standard(s) in order to be consistent with the plan. If a proposed project would be inconsistent with the plan, the responsible official must modify the proposal, reject the proposal, or amend the plan.

NFMA requirements for timber harvest are in the final rule text (sec. 219.12(b)) including provisions for protection of soil, watershed, and other resources during timber harvest. The final rule depends on the Forest Service Directive System to further specify how to meet the NFMA requirements. Existing directives are available at *http://www.fs.fed.us/im/directives*. These directives will be revised to be consistent with the final rule.

Current guidance for timber harvest is provided in the 1920 section of the FSM and in FSH 1909.12, chapter 60 for even-aged harvest, reforestation, and stocking requirements, suitability determinations, calculation of long-term sustained yield, and calculation of timber sale program quantities. Detailed direction on watershed protection and management may be found in FSM 2520.

About the comments on guidelines removing the protections from the 1982 rule for wildlife, the final rule and directives are explicitly designed to work together and provide for ecological sustainability through the combination of ecosystem diversity and species diversity approaches. Under the existing directives adopted to carry out the 2005 planning rule, species-of-concern would be identified based on NatureServe rankings (FSH 1909.12 section 43.22b). Under the existing directives species-of-interest would be identified considering many sources including those listed by states as threatened or endangered and those identified in state comprehensive plans as species of conservation concern (FSH 1909.12 section 43.22c). Under the final rule, the primary purpose for identifying species-of-concern is to put in place provisions that will contribute to keeping those species from being listed as threatened or endangered. The combined criteria for species-of-concern and species-of-interest currently in the Forest Service directives would lead to identification of all species for which there are conservation concerns. Particularly, criterion five for species-of-interest (FSH 1909.12, sec. 43.22(c)), which directs identifying ''additional species that valid, existing information indicates are of regional or local conservation concern due to factors that may include significant threats to populations or habitat, declining trends in populations or habitat, rarity, or restricted ranges.'' Species for which there are no conservation concerns would be adequately conserved through the ecosystem diversity approach.

Section 219.7(a)(2)(iv)—Plan Components—Suitability of Areas

Comment: Applicability of suitability and other plan components in restricting or prohibiting projects or activities. Some respondents recommended the description of objectives, guidelines, suitability of areas, and special areas be clarified so decisions on these components do not constitute a final commitment restricting or prohibiting projects or activities. Other respondents said the plan must make a clear decision on priority land use if the plan is to be of use in guiding management. Still others agreed general suitability determinations are appropriate for a strategic forest plan.

Response: Under the final rule section 219.7(a)(2), plan objectives, guidelines, suitability of uses, and special areas designations are not commitments or final decisions approving projects and activities. Plan components provide guidance for future project and activity decisionmaking. The responsible official will identify suitable uses that best fit the local situation. Suitable use identification has evolved over time. Suitable use identification has often been characterized in plans prepared under the 1982 planning rule as permanent restrictions on uses or permanent determinations that certain uses would be suitable in particular areas of the unit over the life of the plan. However, even under the 1982 planning rule, these identifications were never truly permanent, unless they were statutory designations by Congress. It became apparent early in implementation of the 1982 planning rule that plan suitability identifications, like environmental analysis itself, always necessitated site-specific reviews when projects or activities were proposed. For example, on lands identified as generally suitable for timber production, site-specific analysis of a proposal could identify a portion of that area as having poor soil or unstable slopes. The project design would then exclude such portions of the project area from timber harvest. Thus, the final determination of suitability was never made until the project or activity analysis and decision process was completed. This final rule better characterizes the nature and purpose of suitability identification.

The response to comment section on 219.8 has more discussion about how projects and activities must be consistent with the plan.

Section 219.7(a)(2)(v)—Plan Components—Special Areas

Comment: Nature of special designations. A respondent commented that the proposed rule allow the plans to designate or remove designation from certain types of special areas. In the past, this type of action would require environmental review under NEPA, but under the proposed plan, these changes could be made without environmental review. Some respondents stated special designations and final decisions should not be made without some kind of analysis to support that designation. Others suggested that the Appalachian National Scenic Trail, as well as other congressionally designated national scenic and historic trails, be in the list of special designations and that management direction for special areas be in forest plans.

Response: Under the final rule, the level of NEPA analysis needed to support designations would be consistent with agency NEPA procedures. The responsible official may designate special areas for unique or special characteristics during plan development, plan amendment, or plan revision. These areas include national scenic and historic trails, wilderness, wild and scenic river corridors, and research natural areas. National scenic and historic trails, wilderness, and wild and scenic river corridors are statutorily designated. Other areas (such as national scenic and historic trails) may be designated through plan development, amendment, revision, or through a separate administrative process with an appropriate level of NEPA analysis. The types of special areas that the responsible official may designate or remove depend on the designation authority in Forest Service directives, regulation, or statute (FSH 1909.12 section 11.15). The intent of the new rule is not to expand the use of special areas into totally new categories, but rather to assure that plans recognize the categories established by Congress, the Department, or the Agency. For example, the forest supervisor may recommend research natural areas (RNAs) but regional foresters may designate RNAs. The forest supervisor may recommend national scenic and historic trails, wilderness, and wild and scenic river corridors but only the Congress may designate. Under this final rule the Department envisions forest supervisors designating areas with the following characteristics: scenic, geological, botanical, zoological, paleontological, historical, and recreational as discussed in FSM Chapter 2372. Designating a special area that simply identifies one or more of these characteristics, and also includes plan components developed for that particular area, may occur without further NEPA analysis and documentation. The responsible official with designation authority may propose a prohibition on projects or activities in specific special areas. Furthermore if the prohibition commands anyone to refrain from undertaking projects and activities in the areas, or that grants withholds or modifies contracts, permits, or other formal legal instruments, that proposed designation would be done in accord with the Forest Service NEPA procedures.

Section 219.7(a)(6)(ii)—Plan Process—Consideration and Recommendation for Wilderness

Comment: Roadless inventory procedures and wilderness recommendations. Some respondents stated the wilderness review required by the rule should require that the roadless areas inventory include those areas that do not have maintained roads and that may have been missed in past reviews.

Some respondents are concerned that section 219.7(a)(5)(ii) of the proposed rule required a vast expansion of areas to be considered for wilderness because the language is overly broad and does not specify what constitutes wilderness characteristics or to what degree such characteristics must be present to merit evaluation. These respondents were concerned this language will lead to expansion of wilderness without considering other multiple uses. Other respondents believed this section of the rule is in conflict with the nature of plans as strategic and not a final agency decision and recommend the removal of section 219.7 from the final rule. Some respondents suggested this section of the rule exclude national forests in Alaska from further wilderness review and recommendation.

Response: Identification of potential wilderness areas and wilderness recommendations has always been an integral part of the NFS planning process. The process for wilderness evaluation has not changed from the requirements in the 1982 rule. Under the final rule section 219.7(a)(6)(ii), the responsible official will ensure that, unless otherwise provided by law, all NFS lands possessing wilderness characteristics be considered for recommendation as potential wilderness areas during plan development or revision. Identification of potential wilderness areas and wilderness recommendations has always been an integral part of the NFS planning process. The final rule directs responsible officials to ensure that, unless otherwise provided by law, all NFS lands possessing wilderness characteristics be considered for recommendation as potential wilderness areas during plan development or revision. The Forest Service directives (FSH 1909.12, chapter 70) provide the detailed criteria for the identification of potential wilderness areas and the wilderness evaluation process to follow in carrying out the requirements of the rule. The inventory criteria for potential wilderness areas are not part of the final rule. About roads, the inventory criteria from FSH 1909.12 section 71.1 states that such areas do not contain forest roads (36 CFR 212.1) or other permanently authorized roads, except as permitted in areas east of the 100th meridian. Forest roads have a wide range of maintenance levels and may be closed and not maintained for passenger vehicles. The final rule does not predetermine the plan decision a responsible official may make concerning the future management of areas meeting potential wilderness criteria. A variety of options may be considered. Final decisions on designation of wilderness are made only by Congress, and those designations may or may not follow agency recommendations.

Section 219.7(a)—Developing Options

Comment: Developing a forest plan requires the consideration of alternatives. A respondent commented that one of the most valuable elements of the existing planning process is the consideration of alternatives. This has yielded new ways of reconciling issues, often through ideas and alternatives submitted by scientists and other reviewers. Not having alternatives to consider puts the Forest Service in the unenviable position of making decisions without having alternatives and their effects at its disposal.

Response: Under the final rule, alternatives and their effects under NEPA are not needed for responsible officials to approve a plan. Section 219.7(a) of the final rule implements a collaborative and participatory process for land management planning. Under the final rule, the responsible official and the public may iteratively develop and review various options for plan components, including options offered by the public. Responsible officials and the public would work collaboratively together to narrow the options for a proposed plan based on analysis of the options instead of focusing on distinct alternatives carried through the entire process. The Forest Service developed this iterative option approach under the

final rule to encourage people to work together, to understand each other's values and interests, and to find common solutions to the important and critical planning issues. Alternatives under NEPA may also be developed if agency NEPA procedures require the preparation of an EIS or EA for a specific plan development, plan amendment, or plan revision.

Section 219.8—Application of a New Plan, Plan Amendment, or Plan Revision

This section of the final rule describes how and when new plans, plan amendments, or plan revisions are applied to new or ongoing projects or activities. The Department retains the 2007 proposed rule wording in the final rule, with a minor change. Although the 2007 proposed rule required project or activity consistency with the applicable plan, the final rule requires consistency with the applicable plan components. This change was made to avoid confusion. The Department wants to make clear that future projects do not have to be consistent with other information written in plans. Today and in the future, land management plans have other information in the plan besides plan components. For example, other information may include items such as collaboration strategies, program emphasis, management approaches, priorities, and resource strategies. These items may convey a sense of priority and focus among objectives so that the public will know where the responsible official expects to place the greatest importance. However, these are often quite speculative projections based on past trends of budget and program accomplishments. This other information is not the plan.

Comment: Site specific applicability of the plan. A respondent commented that the proposed rule removed any applicability of the plan to site specific projects and violated NFMA by allowing project-specific amendments rather than requiring that all projects be consistent with plan direction.

Response: To respond effectively to new information or changed circumstances it is essential for the rule to include provisions for amending the plan when it is needed. The final rule requires that decisions approving projects and activities be consistent with the plan. Site-specific plan amendments are a valid method of achieving final rule plan consistency. Provisions at section 219.8(e)(3) are consistent with the NFMA provisions for plan amendments found at 16 U.S.C. 1604(f)(4), NEPA regulatory requirements relevant to new information and changed circumstances at 40 CFR 1502.22, and Forest Service practice to allow project-specific amendments since the 1982 rule.

Comment: Consistency of projects and activities with the plan. Several respondents said the proposed rule at section 219.8 is not consistent with the rule preamble in describing consistency of projects and activities with plan guidelines. The preamble indicates that ''a project or activity design may vary from the guideline only if the design is an effective means of meeting the purpose of the guideline, to maintain or contribute to the attainment of relevant desired conditions and objectives.'' The preamble allows variation from plan guidelines without a plan amendment, but that option is not reflected in the proposed rule at section 219.8(e). These respondents were concerned that retaining this text from the proposed rule would override the statements in the preamble about plan flexibility and the nonbinding nature. Another respondent stated that the proposed rule and preamble do not explain or define what it means to be ''consistent'' with the plan.

Response: To carry out the NFMA plan consistency mandate in an effective way, the Agency will amend the normal wording about plan consistency in the FSH 1909.12, section 11.4. This template wording should be used in revised plans. By amending the existing procedures in the Forest Service Directive System, the Agency will clarify how projects or activities must be consistent with applicable plan components. The public will have the opportunity to comment on this amendment to directives about consistency between projects and plans.

Tentative wording for the proposed amendment may be as follows:

(a) A project or activity is consistent with the desired condition component of the plan if it does not foreclose the opportunity for maintenance or attainment of the applicable desired conditions over the long term based on the relevant spatial scales described in the plan.

(b) A project or activity is consistent with the objectives component of the plan if it contributes to or does not prevent the attainment of one or more applicable objectives.

(c) A project or activity may be consistent with a guideline in one of two ways.

(1) The project or activity is designed in accord with the guideline, or

(2) A project or activity design varies from a guideline if the design is an effective means of meeting the purpose of the guideline to maintain or contribute to the attainment of relevant desired conditions and objectives. If the responsible official decides such a variance from a guideline is appropriate, the responsible official must document how the variance is an effective means of maintaining or contributing to the attainment of relevant desired conditions and objectives. A variance from a guideline does not require an amendment to the plan.

(d) A project with the primary purpose of timber production may only occur in an area identified as suitable for that use (16 U.S.C. 1604(k)).

(e) For suitability of areas except for timber production, consistency of a project or activity should be evaluated in one of two ways.

(1) The project or activity is a use identified in the plan as generally suitable for the location where the project or activity is to occur, or

(2) The project or activity is not a use identified in the plan as generally suitable for the location, but the responsible official documents the use to be appropriate for that location.

(f) Where a plan provides plan components specific to a special area, a project, or activity must be consistent with those area-specific components.

(g) A project or activity is consistent with a standard if the project or activity is designed in accord with the standard.

Comment: Protecting valid existing rights. Several respondents expressed the view that all existing uses authorized by the Forest Service include valid existing rights and should be allowed to continue for the term of existing authorizations. Others indicated existing authorizations should only be modified if they conflict with applicable laws.

Response: NFMA at 16 U.S.C. 1604(i) states, ''When land management plans are revised, resource plans and permits, contracts and other instruments, when necessary, shall be revised as soon as practicable. Any revision in present or future permits, contracts, and other instruments made pursuant to this section shall be subject to valid existing rights.'' The final rule section 219.8(a) is consistent with this requirement.

Section 219.9—Public Participation, Collaboration, and Notification

This section of the final rule describes collaboration; comment periods; content of public notices, engaging interested individuals, organizations, and governments; and public notifications. The Department retains the 2007 proposed rule wording in the final rule, with minor changes.

Because of a request by Alaska Native Corporations, the Department added the

name Alaska Native Corporation to the list of persons the responsible official must provide opportunities for collaboration (sec. 219.9(a)(3)). As the responsible official must provide opportunities for many people to collaborate, this is not a substantive change.

At paragraph (a)(3) of this section, the Department added a sentence saying that the responsible official should seek assistance, where appropriate, from federally recognized Indian Tribes and Alaska Native Corporations to help address management issues or opportunities. This change was made to make the requirements for engaging Tribal governments and Alaska Native Corporations similar to paragraph (a)(2) for engaging State and local governments and Federal agencies.

At paragraph (b)(3)(v) of this section, the Department modified the wording to provide required content for a public notice in cases where an ongoing planning process under the 2005 rule was halted because of the district court's order in *Citizens for Better Forestry* v. *USDA*. The responsible official's public notice must state whether a planning process initiated before the final rule was promulgated will be adjusted to the final rule requirements. The Department modified the proposed rule wording because of public comment. Some respondents were unclear as to how the products created during land management planning under the 2005 rule, such as those generated with a interest group, would be used in the final plans. This notice now provides a vehicle for the public to learn if previously created products will be used. As the proposed rule, described in the content of the public notice for an adjustment to an ongoing planning process, this change in the requirements of the notice is not a substantive change.

Comment: Public participation in the planning process. Several respondents commented that the proposed rule unfairly limits public participation in the planning process.

Response: The final rule establishes public involvement procedures and requirements for formal public comment opportunities that go well beyond the requirements of NEPA. Specifically, the final rule requires the responsible official to involve the public in developing and updating a comprehensive evaluation report; in establishing the components of the plan, including the desired condition of the lands involved; and in designing the monitoring program to be carried out during the life of the plan. The requirements for public participation and collaboration for land management planning in the final rule create a high standard for agency performance. Considering all the opportunities to participate under the final rule, people would not only continue to have access to the land management planning process, they would have the opportunity to participate more meaningfully in bringing each plan to life. With the efficiencies under the final rule, plan revisions would be expected to take 2 to 3 years to complete as opposed to a 5 to 7 year period that was typical in the past under the 1982 rule. The Agency believes this shorter timeframe would make it possible for more people to stay involved throughout the planning process.

Comment: Public involvement if an EIS is not prepared. Many were concerned that without an EIS (as required under the 1982 rule), opportunities for public involvement and oversight in the land management planning process will be reduced or eliminated. They were concerned because specific public involvement requirements in the CEQ regulations that apply to EISs do not apply to categorical exclusions.

Response: Categorical exclusions do not require the same system of public involvement as EISs. However, if a categorical exclusion is used, the rule's extensive requirements for public participation and collaboration apply nonetheless. The final rule provides greater opportunities for public notification and comment during the land management planning process than is required for an EIS. In addition, under the final rule, the responsible official is specifically required to involve the public in developing and updating the comprehensive evaluation report, establishing the components of the plan, and designing the monitoring program.

Comment: Access to information if an EIS is not prepared. Some respondents were concerned that people will have less access to timely information about environmental impacts and the comparative advantages of various alternatives if an EIS is not prepared for plans. Some were concerned that there will not be legal recourse for submitting citizen alternatives. Some were concerned that the rule eliminates a ''scoping'' phase, such as the 30-day period at the beginning of a NEPA process, and that the rule's 90-day comment period for proposed plans will be too late to have changes made.

Response: The final rule section 219.9(a) requires public involvement at early stages of the planning process when the comprehensive evaluation report would be developed and updated. The comprehensive evaluations would provide information about the effectiveness of current forest management in achieving desired conditions. This can provide useful information to managers and the public for collaboratively developing a plan or identifying needed changes to discuss during plan revision. Formal public notification of the initiation of development of a plan is similar in timing to scoping under NEPA. Opportunity for public involvement is also required in the developing the components of the plan and designing the monitoring program. A 90-day comment period on a proposed plan is an NFMA requirement. Under the 1982 rule, it was done at the proposed plan/draft EIS review stage. However, public involvement in the planning process is not intended to be limited to discrete 30-day or 90-day periods, but may occur throughout the process. Options may be considered as an iterative approach to developing plan components in collaboration with the public. Additional guidance and procedures for collaboration are supplied through agency directives located in FSM 1921.6 and FSH 1909.12, chapter 30.

Comment: Importance of government relationships. Some respondents reiterated the importance of collaborative relationships with other government entities that manage surrounding lands. Some respondents wanted the rule to provide an equivalent to the cooperating agency provision of NEPA.

Response: Under the final rule, the responsible official must coordinate planning efforts with those of other resource management agencies. The responsible official will provide opportunities for other government agencies to be involved, collaborate, and participate in planning for NFS lands.

Comment: Public notices via e-mail. Some respondents were concerned that few citizens review legal notices in newspapers or the **Federal Register**, and notices should be e-mailed to interested publics.

Response: Under the final rule, a variety of public notification techniques may be used, including mail and e-mail. Public notification will be essential in meeting the public participation requirements of the rule.

Comment: Public involvement in plan evaluation and monitoring. Some respondents commented that an opportunity for public involvement should be provided to change the monitoring program. One respondent suggested that some changes could have environmental effects and that these should only be done through a plan

amendment rather than simply required notification of change.

Response: Under the final rule, the responsible official would notify the public of changes in the monitoring program and can involve the public in a variety of ways when considering changes in the program. Section 219.9(a) requires the responsible official to involve the public in developing and updating the comprehensive evaluation, establishing the components of the plan, and designing the monitoring program.

Comment: Public involvement for administrative corrections. One respondent said administrative corrections might be significant, and should require public notice before they are made. The respondent believes that changes such as to logging projections and monitoring procedures constitute significant changes with environmental effects.

Response: Administrative corrections are intended for non-substantive changes to plan components and for changes in explanatory material. Long-term sustained-yield capacity (LTSYC) is a statutory limit on timber sale amount. The timber sale program quantity is an objective. Administrative corrections would not be appropriate for LTSYC or for the TSPQ. Administrative correction may be appropriate, however, for timber harvest projections which are for information purposes only, and are not binding. Timber harvest projections are not LTSYC or TSPQ, but, for example, may be estimates of the amount of harvest by cutting method, management emphasis, or product type. The directive system will require administrative corrections to be made available to the public through the unit's Web site or by other means.

Comment: Extending Tribal consultation to Alaska Native Corporations. Several Alaska Native Corporations requested inclusion of language at section 219.9(a)(3) that would ensure consultation with Alaska Native Corporations as required by the 2004 and 2005 Consolidated Appropriations Acts.

Response: Alaska Native Corporations has been added to the engaging Tribal governments provision at section 219.9(a)(3) as well as to section 219.6(b)(3) on collaborative monitoring. The definition of ''Alaska Native Corporations'' provided is in section 219.16.

Comment: Consultation requirements when identifying species-of-interest. Some respondents recommended the final rule specifically require consultation with the USFWS, state heritage, or natural resource agencies in the identification of species-of-interest.

Response: The final rule at sections 219.9(a)(2 and 3) requires the responsible official to coordinate and engage with Federal agencies, local governments, and States during the planning process. The responsible official would provide opportunities for the coordination of Forest Service planning efforts with those of other resource management agencies and to seek assistance, where appropriate, from other State and local governments, Federal agencies, local Tribal governments, and scientific institutions to help address management issues or opportunities. Consultation with the USFWS (and NOAA Fisheries) is a process defined and required by the Endangered Species Act and which typically includes a requirement to identify listed species that may be affected.

Section 219.10—Sustainability

This section of the final rule provides provisions for social, economic, and ecological sustainability. The Department retains the 2007 proposed rule wording in the final rule.

Comment: Elements of sustainability. Some respondents commended the Agency for continuing to define sustainability in terms of social, economic, and ecological elements; none of which trumps the others. It was felt this more accurately reflects the tenets of ecosystem management with its explicit recognition of the human dimension of natural systems and national forest management, and that the three types of sustainability are tightly linked. Moreover, respondents commented that although ecological sustainability is unarguably important, it needs to be balanced with the Agency's charge to ''provide a continuous flow of goods and services to the nation in perpetuity'' as well as other obligations, such as with the Mining and Minerals Policy Act.

Others believe that ecological sustainability should be the primary goal because ecological sustainability provides the needed assurance that social and economic benefits can be produced at sustainable levels. There was also the comment that the highest priority for forest management must be the maintenance of as complete a component of its species and natural processes as possible.

Another respondent commented that sustaining social and economic systems may conflict with sustaining ecological systems, and asked what will be done to ensure that these goals do not conflict. Lastly, a respondent noted that the ''overview'' to the proposed rule states that plans ''should'' guide sustainable management, which implies that sustainable management is optional.

Response: NFMA requires the use of the MUSYA to provide the substantive basis for forest planning and the development of one integrated plan for the unit. Under the final rule, the Agency would treat economic and social elements as interrelated and interdependent with ecological elements of sustainability, rather than as secondary considerations. Sustainability is viewed as a single objective with interdependent social, economic, and ecological components. This does not downplay the importance of ecological sustainability, as the MUSYA provides for multiple-use and sustained use in perpetuity without impairment to the productivity of the land. The final rule recognizes the interconnection between the ecological, social, and economic components of sustainability and requires consideration of each in the planning process. It establishes a planning process that can be responsive to the desires and needs of present and future generations of Americans for the multiple uses of NFS lands. The rule does not make choices among the multiple uses; it provides for a process by which those choices will be made during the development of a plan for each NFS unit.

Comment: Time frames for sustainability. Some respondents stated that ecological sustainability is measured in decades and centuries while economic sustainability is usually measured in a five-year time frame. They recommended that sustainability be measured only by ecological sustainability time frames.

Response: The Agency recognizes that time frames for ecological sustainability and economic sustainability will rarely match. The final rule allows for NFMA's requirement to consider both the economic and environmental aspects of various systems of renewable resource management during development of a plan.

Comment: Approach to maintaining diversity. Some respondents believe that the proposed rule's reference to an ''overall goal'' of providing a framework and narrowing the focus to endangered and threatened species, species-of-concern and species-of-interest is not sufficient. Other respondents commented that following the coarse filter/fine filter approach is a major improvement, because scarce resources can be focused on communities rather than trying to devote the same attention to a myriad of species that are not in danger of ESA listing. Other respondents said that the proposed rule does little to specify how the

''framework'' will be crafted, how it will ''contribute to'' sustaining native ecological systems, or how plans will ''provide for'' threatened and endangered species, species-of-concern or species-of-interest.

Response: The final rule sets forth the goal for the ecological element of sustainability to contribute to sustaining native ecological systems by sustaining healthy, diverse, and productive ecological systems as well as by providing appropriate ecological conditions to support diversity of native plant and animal species in the plan area. To carry out this goal, the final rule adopts a hierarchical and iterative approach to sustaining ecological systems: Ecosystem diversity and species diversity. The intent of this hierarchical approach is to contribute to ecological conditions appropriate for biological communities and species by developing effective plan components (desired conditions, objectives) for ecosystem diversity and supplementing it with species-specific plan components as needed, thus improving planning efficiency. The final rule leaves the specific procedures on how the framework will be crafted for the Forest Service directives. The Department believes it is more appropriate to put specific procedural analytical requirements in the Forest Service directives rather than in the rule itself so that the analytical procedures can be changed more rapidly if new and better techniques emerge. As discussed in agency directives, the responsible official will develop plan components for ecosystem diversity establish desired conditions, objectives, and other plan components, where feasible, for biological communities, associated physical features, and natural disturbance processes that are the desired components of native ecosystems. The directives specify how to deal with local conditions. Ecosystem characteristics include the structure, composition, and processes of the biological and physical resources in the plan area. The primary approach the Agency envisions for evaluation of characteristics of ecosystem diversity is estimating the range of variation that existed under historic disturbance regimes and comparing that range to current and projected future conditions. For specific detail procedures see FSM 1920 and FSH 1909.12, chapter 40.

As part of the hierarchical and iterative approach, the plan area would be assessed for species diversity needs after plan components are developed for ecosystem diversity. The responsible official would evaluate whether the framework established by the plan components meets the needs of specific federally-listed threatened and endangered species, species-of-concern, and selected species-of-interest. If needed, the responsible official would develop additional provisions for these species to maintain a framework for providing appropriate ecological conditions in the plan area that contribute to the conservation of these species.

Under the final rule, the Agency selected federally-listed threatened and endangered species, species-of-concern, and species-of-interest for evaluation and conservation because: (1) These species are not secure within their range (threatened, endangered, or species-of-concern), or (2) management actions may be necessary or desirable to achieve ecological or other multiple-use objectives (species-of-interest). Species-of-interest may have two elements: (1) Species that may not be secure within the plan area and, therefore, in need of consideration for additional protection, or (2) additional species of public interest including hunted, fished, and other species identified cooperatively with State fish and wildlife agencies.

Additional guidance is provided in Forest Service Directive System. For example, at FSM 1971.76c, plan components for federally-listed species must comply with the requirements and procedures of the ESA and should, as appropriate, carry out approved recovery plans or deal with threats identified in listing decisions. Plan components for species-of-concern should provide the appropriate desired ecological conditions and objectives to help avoid the need to list the species under the ESA. Appropriate desired ecological conditions may include habitats of appropriate quality, distribution, and abundance to allow self-sustaining populations of the species to be well distributed and interactive, within the bounds of the life history, distribution, and natural fluctuations of the species within the capability of the landscape and consistent with multiple-use objectives. (A self-sustaining population is one that is sufficiently abundant and has appropriate population characteristics to provide for its persistence over many generations.) For species-of-interest, if a plan component will not contribute appropriate ecological conditions to maintain a desired or desirable species-of-interest, the responsible official must document the reasons and multiple-use tradeoffs for this decision.

Comment: Meeting the NFMA diversity requirements. Some respondents stated that the proposed rule's sustainability provisions contain no clear mandates, no concrete obligations, and are unenforceable; so they do not meet the NFMA's diversity requirement. Others noted the proposed rule at section 219.10 only mentions the diversity of native plant and animal communities, but this section does not require plans to provide for that diversity or ensure that there will be a diversity of plant and animal communities, as required by NFMA. Another respondent challenged the wording at section 219.10(b) of the proposed rule that appears to make providing ecosystem and species diversity subservient to meeting multiple-use objectives, although the NFMA states that providing for diversity is a necessary component of meeting multiple-use objectives.

Response: The NFMA requires guidelines for land management plans that ''provide for diversity of plant and animal communities based on the suitability and capability of the specific land area in order to meet overall multiple-use objectives.'' (16 U.S.C. 1604(g)(3)(B)). The NFMA does not mandate a specific degree of diversity nor does it mandate viability. The NFMA affords the Agency discretion to provide policy guidance to provide for diversity. The final rule wording at section 219.10(b) is consistent with NFMA. As discussed the preamble to the 2005 planning rule (70 FR 1023, 1028, (January 5, 2005)) the Agency developed five concepts to design the planning rule provisions for plant and animal diversity: (1) Managing ecosystems; (2) providing for a diversity of species; (3) concentrating management efforts where the Agency has authority and capability; (4) determining with flexibility the degree of conservation needed for species not in danger of being listed; and (5) tracking progress of ecosystem and species diversity using a planning framework.

Comment: Approach to providing ecosystem sustainability. Some respondents do not believe that the emphasis on ecosystem diversity will protect rare and declining species. They expressed concern that there are no clear mandates, concrete obligations, measurable objectives, or mandatory requirements to provide for diversity and that simply having a ''framework'' will not provide adequate protection to the species. The question was raised as to why plans would only ''contribute to'' sustaining ecological systems and said the rule should require plans to ''sustain ecological systems.'' Some observed that under the proposed rule at section 219.10(b)(2), forest plans will no longer have to specifically address

wildlife needs unless the Forest Service determines that the ''ecosystem diversity'' provisions of the plan need to be supplemented for a particular species. They also noted that FSH 1909.12, section 43.21, states that a species approach is not required. Some respondents were concerned that a responsible official could decide that the very coarse filter of ecosystem diversity is sufficient for protecting all resident fish, wildlife, and plants, and some respondents said that no program of protecting species can be complete without a requirement for ensuring individual species' viability. A respondent noted that the definition of self-sustaining populations in the FSM is not clear, because the terms ''sufficiently abundant,'' ''appropriate population characteristics,'' and ''persistence over many generations'' are not defined.

Response: Under the final rule and Agency directives, the responsible official would identify federally-listed threatened and endangered species, species-of-concern, and species-of-interest whose ranges include the plan area. The federally-listed threatened and endangered species are those species that are listed as threatened or endangered by the Department of the Interior, USFWS or the Department of Commerce, NOAA Fisheries. Under the Agency directives, species-of-concern are those identified as proposed and candidate species pursuant to the ESA or those species ranked by NatureServe as needing action to prevent listing under ESA. Under the Agency directives, species-of-interest are identified by working cooperatively with State fish and wildlife agencies, the USFWS, NatureServe, and other collaborators.

The responsible official would then determine if the ecological conditions to support threatened and endangered species, species-of-concern, and species-of-interest would be provided by the plan components for ecosystem diversity. If not, then additional species-specific plan components would be included. Under the Agency directives, as part of an iterative process of developing plan components for ecosystem diversity and species diversity, several examinations, or analysis steps may be carried out. An initial analysis based on the current plan and species status may set the stage for the development of plan components for the revised plan. Such an evaluation helps identify the key risk factors that should be dealt with in plan components. Additionally, the evaluation would help determine what combinations of plan component will best contribute to sustaining species diversity. This additional evaluation would focus on the (1) Amount, quality, and distribution of habitat; (2) The dynamics of habitat over time; (3) Species distribution; (4) Known species locations; (5) Information on species population trends and dynamics if available; (6) Key biological interactions; (7) Other threats and limiting factors, such as wildland fire and other natural disturbances, roads, trails, off-road use, hunting, poaching, and other human disturbances. FSM 1920 and FSH 1909.12, chapter 40 contain further guidance on how to provide for ecological and species diversity and how to evaluate whether ecological conditions will provide for ''self-sustaining populations'' of species-of-concern. Standards to maintain or improve ecological conditions, and to maintain or improve ecological conditions for specific species may be included in a land management plan.

Comment: Species-of-Concern and Species-of-Interest. Some respondents commented that previous Forest Service planning rules had extended protection to species proposed for listing under the ESA, ''candidate species'' under the ESA, State-listed species, and Forest Service ''sensitive species.'' Other respondents made the comment they found the species-of-concern and species-of-interest system to be confusing and that the criteria for inclusion did not address species needs adequately. Concerns were expressed about the time needed for State fish and wildlife agencies to interact with responsible officials to ensure that all wildlife management concerns and issues are adequately addressed. It was recommended a return to a modified management indicator species (MIS) system. Others commented that the Agency needs to clarify how it will determine the accuracy of species-of-concern and species-of-interest, use scientifically credible third parties in these determinations, and address how species-specific provisions for those species that do not meet the species-of-concern and species-of-interest criteria will be provided. They stated that the species-of-concern criteria need to be reconsidered to be more pro-active in managing wildlife populations to prevent ESA listing.

Response: The concept of MIS was not included in the final rule because recent scientific evidence identified flaws in the MIS concept. The concept of MIS was that population trends for certain species that were monitored could represent trends for other species. Through time, this was found not to be the case. The Agency defined species-of-concern and species-of-interest clearly. As identified in the Agency directives species-of-concern are those identified as proposed and candidate species under the ESA or those species ranked by NatureServe as needing action to prevent listing under the ESA. Under the final rule, the Forest Service directives identify the criteria for determining the species-of-concern and species-of-interest lists. The criteria include working with lists of species developed by objective and scientifically credible third parties, such as the USFWS, the National Marine Fisheries Service, and NatureServe. These lists of species are also to be determined by working collaboratively with the State fish and wildlife agencies and using some of their sources of information such as their State Wildlife Conservation Strategies (see FSH 1909.12, chapter 40). The primary purpose for identifying species-of-concern is to put in place provisions that will contribute to keeping those species from being listed as threatened or endangered. The combined criteria for species-of-concern and species-of-interest should lead to identification of all species for which there are legitimate conservation concerns (FSH 1909.12, section 43.22). Species for which there are no conservation concerns should be adequately conserved through the ecosystem diversity approach.

Comment: Retain the 2000 rule provisions for species viability. Some respondents preferred the explicit, mandatory provisions for species viability in the 2000 rule at section 219.20, because they believed it would help the Forest Service keep the wildlife that now exists, while the proposed language would lead to the disappearance of more species from the national forests.

Response: The 2000 rule established a ''high likelihood of viability'' criterion. Although the 2000 rule provisions at section 219.20 provided for considerations based on the suitability and capability of the specific land area, the provisions would also have established the most intensive analysis requirements over either the 1982 rule or the proposed 2007 rule. The 2000 rule analysis requirements for ecosystem diversity and species diversity were estimated to be very costly and neither straightforward nor easy to carry out.

Comment: Retain the 1982 rule provisions for species viability. Some respondents commented that given the high level of importance of national forest lands for wildlife, planning regulations should ensure that plans focus on maintaining the viability of

native fish, wildlife, and plants; and that the section 219.19 provisions from the 1982 planning regulations should be retained. Conversely, other respondents agreed with the move away from the viability language in the 1982 rule stating that it was never realistic to provide for viability for all species on all lands given the many factors that influence viability, and that the focus should be on managing habitat as defined by desired conditions rather than on counting populations of each species. Some respondents commented that the viability requirement is a pillar of wildlife conservation in the United States. They provided many examples of the importance of wildlife habitat and the many local and international threats to wildlife.

Some respondents noted that one of the reasons stated by the Forest Service for not including the species viability requirement in the proposed rule is that it is not always possible to maintain viability due to factors outside the Agency's control. However, some have responded that the Agency should still do everything it can to maintain viability for species on NFS lands. It was suggested that although the Forest Service should give a considerable amount of attention to those species that spend most of their time on NFS lands; perhaps the Agency could give those species relatively little attention to those species that spend a small amount of time on NFS lands.

Response: As noted earlier, the NFMA requires guidelines that provide for diversity. It does not mandate viability. The Agency has learned that the requirement to maintain viable native fish and wildlife species populations without recognizing the capability of the land is not practicable due to influences on many populations that are beyond agency control. The Forest Service is dedicated to the principle that biological diversity is an essential and critical facet of our multiple use land management mandate. Therefore, the final rule requires a framework using the concepts of ecosystem diversity and species diversity. The issue of self-sustaining populations is dealt with in the current Forest Service Directive System (FSM 1921.76(c)). The directives are not as prescriptive as the viability requirement under the 1982 planning rule; however, the enhancement of conditions for fish and wildlife populations is the expected outcome of carrying out management consistent with plans developed under the final rule. The suggestion to give a considerable attention to those species that spend most of their time on NFS lands and to give less attention to those species that spend most of their time elsewhere is similar to the direction in the Forest Service directives developed to carry out the 2005 planning rule. About self-sustaining populations FSM 1921.76c says that:

> Plan components for species-of-concern should provide appropriate ecological conditions to help avoid the need to list the species under the Endangered Species Act. Appropriate ecological conditions may include habitats that are an appropriate quality, distribution, and abundance to allow self-sustaining populations of the species to be well distributed and interactive, within the bounds of the life history, distribution, and natural population fluctuations of the species within the capability of the landscape and consistent with multiple-use objectives. A self-sustaining population is one that is sufficiently abundant and has appropriate population characteristics to provide for its persistence over many generations. The following points describe appropriate considerations for plan components based on the portion of the range of a species-of-concern that overlaps a plan area. When a plan area encompasses:
>
> 1. The entire range of a species, the plan components should contribute appropriate ecological conditions for the species throughout that range.
>
> 2. One or more naturally disjunct populations of a species, the plan should contribute appropriate ecological conditions that contribute to supporting each population over time.
>
> 3. Only a part of a population, the plan should contribute appropriate ecological conditions to support that population.
>
> Where environmental conditions needed to support a species-of-concern have been significantly altered on NFS lands so that it is technically infeasible to provide appropriate ecological conditions that would contribute to supporting self-sustaining populations, the plan should contribute to the ecological conditions needed for self-sustaining populations to the degree practicable.

In addition, the 1982 planning rule at section 219.19 says:

> Fish and wildlife habitat shall be managed to maintain viable populations of existing native and desired non-native vertebrate species in the planning area. For planning purposes, a viable population shall be regarded as one which has the estimated numbers and distribution of reproductive individuals to insure its continued existence is well distributed in the planning area. In order to insure that viable populations will be maintained, habitat must be provided to support, at least, a minimum number of reproductive individuals and that habitat must be well distributed so that those individuals can interact with others in the planning area.

Furthermore, the 1982 planning rule at section 219.19 contains the words ''shall be managed to maintain'' and the stringent ''ensure.'' These words have been interpreted by some people to be a 100 percent certainty that all species must remain viable at all times. The 100 percent certainty interpretation is a technical impossibility given that the cause of some species decline is beyond the Forest Service's authority. For example, viability of some species on NFS lands might not be achievable because of species-specific distribution patterns (such as a species on the extreme and fluctuating edge of its natural range), because the reasons for species decline are due to factors outside the control of the Agency (such as habitat alteration in South America causing decline of some neotropical migrant birds), or because the land lacks the capacity to support species (such as drought affecting fish habitat).

The Agency developed these directives to carry out the 2005 rule. The final rule provisions for ecosystem diversity and species diversity are identical to the 2005 rule. Therefore, there is not an urgent obligation to update the directives for ecosystem diversity and species diversity; however, because of public comment the Agency will take a comprehensive look a these directives and may update them to be more effective and efficient.

Comment: Reasons for not retaining a viability requirement. Several respondents disagreed with the reasons for not establishing a viability requirement cited in the preamble for the proposed rule. While they recognized that the number of species having habitat or potential habitat is very large, they disagreed with this being justification to not include a viability requirement. It was suggested that the Agency could focus on species whose overall viability might be questionable and refine the list of species to those whose populations and habitat are most affected by changes occurring on NFS lands. Another respondent stated that as a minimum, the viable populations of proposed, endangered, threatened, and sensitive species (PETS) and management indicator species (MIS) should be managed for viability. Still another respondent suggested that instead of abandoning the viability requirement because it does not make sense to apply it to small national forests such as the Finger Lakes National Forest, those national forests should just be exempt from the requirement. Respondents also disagreed with the statement in the preamble to the proposed rule that focusing on viability would divert attention from an ecosystem approach. They responded that an understanding of both ecosystems and species is needed to understand the functioning of ecosystems. A focus on viability could

help maintain the existence of certain species that, if under an ecosystem approach, could be missed and might disappear from the area or not receive the attention needed to arrest population decline in that area. Further, some contended that providing for species viability maintains ecosystems by maintaining its parts.

Response: The Agency is committed to the hierarchical and iterative approach to sustaining ecosystem diversity and species diversity. To do that, the Agency developed directives that focuses on those species where changes in plan components may be necessary to prevent listing under ESA and refines the list of species to focus on the species whose populations are most affected by changes in habitat on NFS lands. This focus is essentially in the criteria for selecting the federally listed threatened and endangered species, the species-of-concern, and the species-of-interest supplied by the existing Forest Service Directive System (FSM 1921.7 and FSH 1909.12, chapter 40). Similarly, the Agency directives deal with the concern expressed that some species ''might disappear from the area or not receive the attention needed to arrest population decline in that area.'' The term ''self-sustaining populations'' is used instead of the term viability in the current Forest Service Directive System (FSM 1921.76(c)). The Agency directive deals with the suggestion to just ''exempt'' certain national forests from a viability requirement by including direction in Agency directives to take into account capability of NFS lands (FSM 1921.76c). Lastly, the Department believes that providing appropriate ecological conditions for specific threatened and endangered species, species-of-concern, and species-of-interest is superior to managing for PETS and MIS. Under the final rule, threatened and endangered species, species-of-concern, and species-of-interest replace PETS and MIS. MIS concept from the 1982 rule has not been useful to the Agency as a framework for understanding the relationship of changes in wildlife habitat and population trends, because of the lack of ability to predict future trends. Once a plan has been revised under the final rule, sensitive species are no longer needed because species-of-concern and species-of-interest replace them.

Comment: Committee of Scientists recommendations. The comment was made that the proposed rule's sustainability provision represents a departure from the 1999 Committee of Scientists (COS) recommendations on how to implement the NFMA's diversity mandate. The COS recommended a three-tier approach, with the first prong involving an assessment of the composition, structure, and processes of the ecosystems; the second prong involving focusing on the viability of native species through the use of ''focal species,'' and the third prong involving species-level monitoring.

Response: The report and recommendations from the 1999 Committee of Scientists were considered in the development of the proposed and final rule. The basic concepts developed by the COS on ecological sustainability have been carried forward. The procedures in the final rule and Forest Service directives still include looking at the composition, structure, and processes of the ecosystems; considering and evaluating the composition, structure, processes needed by a subset of the plant and animal kingdom (threatened and endangered species, species-of-concern, and species-of-interest), and the development of a monitoring program.

Comment: Proposed rule ignores scientific data concerning sustainability. One respondent stated the proposed rule ignores scientific data concerning what uses are sustainable, thereby setting the stage for long-term destabilization of ecosystems.

Response: The final rule at section 219.7(a)(2)(iv) does not determine what uses are suitable for any specific area of land. The responsible official will identify in the plan areas of land as generally suitable for a variety of uses. Moreover, the final decisions on actual uses of specific areas would not be made until project and activity decisions (sec. 219.7(a)(2)(iv). The responsible official will take into account the best available science and document that science was appropriately interpreted and applied in making plan decisions (sec. 219.11). Various means such as independent peer review, science advisory boards, or other review methods may be used to evaluate the consideration of science under any alternative. The Department believes that these requirements of the final rule, along with the collaborative process, would assure that scientific knowledge is appropriately considered throughout the planning process.

Section 219.11—Role of Science in Planning

This section of the final rule requires the responsible official to take into account the best available science. The words ''take into account'' express that formal science is just one source of information for the responsible official and only one aspect of decisionmaking. The Department retains the 2007 proposed rule wording in the final rule, except the Department removed two requirements from the final rule. The Department removed the requirements that the responsible official must (1) evaluate and disclose substantial uncertainties in that science; and (2) evaluate and disclose substantial risks associated with plan components based on that science. The Department removed these two requirements from the rule because detailed instructions for dealing with uncertainties associated with science information and risks in plan components are currently in the Forest Service directives (FSM 1921.8, FSH 1909.12, chapter 40).

The responsible official may use independent peer reviews, science advisory boards, or other review methods to evaluate science used in the planning process. Forest Service directives provide specific procedures for conducting science reviews (FSH 1909.12, chapter 40).

Comment: Consistency with best available science. Some respondents wanted the rule to retain 2000 rule language requiring responsible officials to make decisions that are consistent with the best available science. They felt that the proposed rule would allow scientific knowledge or recommendations to be overridden. Other respondents agreed with language requiring that the responsible official take into account the best available science, as science itself is constantly changing and subject to controversy. They stated that a requirement for consistency would be unwieldy, ambiguous, and lead to increased litigation.

Several respondents were concerned about a reduced emphasis on science, citing the absence of a requirement to use peer reviewed science or science advisory boards.

Response: The Department is not reducing the emphasis on science. The Department is committed to taking into account the best available science in developing plans, plan amendments, and plan revisions as well as documenting the consideration of science information. However, the Department removed these two requirements from the rule because detailed instructions for dealing with uncertainties associated with science information and risks in plan components are currently in the Forest Service directives (FSM 1921.8, FSH 1909.12, chapter 40).

Although a significant source of information for the responsible official, science would be only one aspect of decisionmaking. When making decisions, the responsible official must

also consider public input, competing use demands, budget projections and many other factors. Under the final rule, the responsible official may use independent peer reviews, science advisory boards, or other review methods to evaluate science used in the planning process. Forest Service directives specify specific procedures for conducting science reviews at FSM 1921.8 and FSH 1909.12, chapter 40. The Agency believes these requirements of the rule, along with the collaborative process, will assure that the best available scientific knowledge is appropriately considered throughout the planning process.

Comment: Consideration of traditional knowledge. One respondent was concerned about the strong focus on science. While acknowledging that science is essential for Forest Service planning, traditional ecological knowledge also has much to offer and is not included in the rule.

Response: Although a significant source of information for the responsible official, science is only one aspect of decisionmaking. Other factors including traditional ecological knowledge need to be considered in the comprehensive evaluations and the formulation of plan components.

Comment: Term ''best available science.'' A respondent was concerned about the term ''best available science'' and urged adoption of another term or defining this term in the definitions section of the rule.

Response: Under the final planning rule there is no firm, established definition on what is best available science. The current Forest Service directives at FSM 1921.8 and FSH 1909.12 chapter 40 use this term. It is also important to realize there can be more than one source for science or more than one interpretation of the science. What constitutes the best available science might vary over time and across scientific disciplines. The best available science is a suite of information and the suite of information does not dictate that something can only be done one way. Furthermore, under the final rule the responsible official must take this suite of information into account in a way that appropriately interprets and applies the information applicable to the specific situation. A four step process is described in the existing directives FSM 1921.81. This process includes gathering quality science information, assessing the information for pertinence, synthesizing the information for application to planning, and applying the synthesis in developing the plan components. When the four step process is followed and an appropriate review is conducted, the best available science should be taken into account and properly influence the plan components.

Comment: Public input into the use of scientific information. One respondent was concerned that scientists consider input from the public and the Agency provides scientific information to the public so that all the facts and information are available during decisionmaking. Another respondent was concerned the rule needed to provide mechanisms for the consideration and incorporation of sound science at all levels and stages of the planning process. Another stated the rule leaves out the voice of scientists in making plan decisions.

Response: Under the final rule, the Department expects the responsible official to share scientific information with the public throughout the process. Under section 219.9(a), the responsible official would involve the public in developing and updating the comprehensive evaluation report, establishing the components of the plan, and designing the monitoring program. Any interested scientists can be involved at any phase of public involvement. It is also expected that responsible officials would seek out quality science information applicable to the issues being analyzed. Under section 219.11, the responsible official would document how best available science was taken into account and that science was appropriately interpreted and applied. This could be done with the use of independent peer review, a science advisory board, or other methods.

Section 219.12—Suitable Uses and Provisions Required by NFMA

This section of the final rule includes provisions for identifying suitable land uses, lands not suitable for timber production, lands suited for timber production, plan provisions for resource management, and requirements for the Forest Service Directive System to include more NFMA requirements. The Department modified the 2007 proposed rule wording in the final rule.

In paragraph (a)(1) of this section, in the discussion of identifying suitable uses, the Department added wording to acknowledge that the responsible official may identify an area as generally unsuitable for various uses. The Department added these words to avoid confusion. Some public comments indicated that identification of an area as generally not suitable for uses would be perceived as a final decision. Therefore, the Department clarified its intent. The Department views this as outgrowth of the proposed rule's suitability provisions and not a substantive change.

Furthermore, in paragraph (a)(1) of this section the Department modified wording about project and decisionmaking to say that the plan approval document may include project and activity decisions when the analysis and plan approval documents are prepared in accord with Forest Service NEPA procedures. The Department made this change because some Agency managers were confused by the previous wording that if authorization of a specific use is needed, responsible officials may approve a specific use through project and activity decisionmaking. As this change clarifies the Department's intent, this is not a substantive change.

In paragraph (a)(2) of this section, in the discussion of identifying lands not suitable for timber production, the Department added wording to explicitly require the responsible official to identify lands as not suitable for timber production if (1) the technology is not available for conducting timber harvest without causing irreversible damage to soil, slope, or watershed conditions or substantial and permanent impairment of the productivity of the land; (2) there is no reasonable assurance that such lands can be adequately restocked within 5 years after final regeneration harvest. The Department added these requirements to the final rule to be responsive to public concerns expressed on this issue. This is not a substantive change because the proposed rule relied on the Forest Service Directive System as a means to accomplish this requirement and because this was considered in the range of alternatives in the EIS.

In response to public comment, the Department added new paragraphs at (a)(3), (a)(4), (b)(2), (b)(3), (b)(4), (b)(5), (b)(6), and (b)(7) of this section to further discuss lands suitable for timber production, other lands where trees may be harvested, and plan provisions for resource management. The Department received several comments arguing that this content is required by NFMA to be in the text of the planning rule. Although the Department does not agree with this legal interpretation of NFMA, the Department has elected to move content into the rule from the Forest Service Directives System and alternative E of the EIS to eliminate this potential controversy. Furthermore, these added paragraphs are not a substantive change because the proposed rule relied on the Forest Service Directive System as a means to accomplish these NFMA requirements

and because this was considered in the range of alternatives in the EIS.

In response to public comment, the Department added a new paragraph (a)(3) in this section to direct the responsible official to consider physical, ecological, social, economic, and other factors when identifying lands suitable for timber production. In addition, the Department added wording to discuss the requirement of NFMA to review lands not suited for timber production every 10 years (16 U.S.C. 1604(k)).

In response to public comment, the Department added a new paragraph (a)(4) in this section to clarify and provide more direction about salvage sales or other harvest needed for multiple-use objectives other than timber production that may take place on areas that are not suitable for timber production as previously discussed at paragraph (a)(2)(ii) of this section.

In response to public comment, the Department added a new paragraph (b) in this section that says the plan should include provisions for resource management. The verb should is used to recognize that extenuating circumstances are likely to occur at times for these provisions, for example, national forests or grasslands without timber programs would not need to deal with the timber management provisions. In paragraph (b) of this section, the Department added wording to deal with the four conditions related to timber harvest at 16 U.S.C. 1604(g)(3)(E) and the five conditions related to even-aged harvest at 16 U.S.C. 1604(g)(3)(F) in response to comments. The wording requires that these plan provisions deal with protection of bodies of water, esthetics, fish, recreation, soil, watershed, wildlife, interdisciplinary review, size limits for cutting of areas in one harvest operation, and the regeneration of the timber resource. Furthermore, paragraph (b)(5) in this section requires that the harvesting system used is not selected primarily because it will give the greatest dollar return or the greatest unit output of timber.

The provision requiring Forest Service directives deal with additional NFMA requirements of the 2007 proposed rule has been redesignated at paragraph (c) of this section. This section requires the directives discuss limitations on timber removal (16 U.S.C. 1611) and culmination of mean annual increment (CMAI) of growth. The Department added the provisions about culmination of mean annual increment of growth to respond to public comment. Based on the use of sound silvicultural practices, the Department specifies in the final rule that this requirement applies to regeneration harvest of even-aged stands on lands identified as suitable for timber production and where timber production is a management purpose for the harvest. The Department added this sentence about CMAI to clarify that based on the use of sound silvicultural practices, MAI and CMAI are not applicable to intermediate harvests (such as thinning or stand improvement measures) and uneven-aged management. In addition, they are not applicable to salvage or sanitation harvesting of timber stands that are substantially damaged by fire, windthrow, or other catastrophe, or which are in imminent danger from insect or disease attack. Further discussion of CMAI is supplied in the Forest Service directives because NFMA does not require this guidance to be in the rule itself.

Comment: General suitability of NFS land for multiple uses. A respondent noted the proposed rule at section 219.12(a)(1) that national forests are generally suitable for a variety of multiple uses appeared to represent a substantial change in forest policy that would open all lands to all uses unless a forest manager specifically limits uses in certain areas. The respondent was concerned that this policy would jeopardize existing closures where certain uses are prohibited unless designated open.

Response: The final rule allows a responsible official to identify lands that are generally suitable for various uses and lands that are generally unsuited for various uses. National Forest System lands are generally open to uses if consistent with the land management plan, subject to consideration under appropriate NEPA procedures and other applicable laws, regulations, and policies. This approach is not a change in agency policy and would not affect existing closures that prohibit a use for specific areas.

Comment: Protection of soil and water resources during timber harvest should be addressed. A number of respondents suggested that more guidance limiting harvest activities should be in the rule, specifically that lands should be identified as unsuited for timber harvest where soil and watershed conditions would be irreversibly damaged. It was also suggested that specific soil and water protection requirements from the 1982 rule or the 2000 rule should be in the 2007 rule.

Response: The final rule and supporting directives meet the requirements of NFMA timber management requirements of 16 U.S.C. 1604(g) including provisions for protection of soil, watershed, and other resources during timber harvest (sec. 219.12(b)). NFMA requirements concerning guidelines for timber harvest are in section 219.12(b), including provisions for protection of soil, watershed, and other resources during timber harvest. The responsible official is required to identify as not suitable for timber production lands where the technology is not available for conducting timber harvest without causing irreversible damage to soil, slope, or watershed conditions or substantial and permanent impairment of the productivity of the land. It also requires that lands be identified as not suitable for timber production if there is no reasonable assurance that such lands can be adequately restocked within 5 years after final regeneration harvest.

Comment: Limitation on timber harvest. Several respondents suggested that the rule include limitations on timber harvest like those prior rules. One suggestion was to limit harvest to the estimated amount of timber that can be sold annually in perpetuity on a sustained-yield basis, with exceptions for situations where areas have been substantially affected by fire, wind, or other events or there is imminent threat from insect or disease. Additional suggestions were made that this section should reflect harvest limitations based on ecological, social, and economic sustainability requirements from the 2000 rule. It was also suggested that the timber resource land suitability requirements include the considerations from section 219.14 of the 1982 rule. These would address such things as economic costs and benefits and other multiple-use objectives.

Response: Under the final rule, responsible officials must limit the sale of timber from each national forest to a quantity equal to or less than a quantity that can be removed for such forest annually in perpetuity on a sustained-yield basis (16 U.S.C. 1611). The rule relies on the Forest Service Directive System for provisions on this issue. The responsible official would take into account all elements of sustainability (social, economic, and ecological) and involve the public in analysis regarding timber suitability and timber harvest limitations during the planning process. The responsible official would evaluate relevant economic and social conditions and trends as appropriate during the planning process. More detail for social and economic analysis is provided in Forest Service Directives System.

Comment: Force and effect of determinations that lands are unsuitable for uses. A determination of lands unsuitable for logging or other

development should have the force of a standard, not a guideline.

Response: Under the final rule, a project with the primary purpose of timber production may only occur in an area identified as suitable for that use (16 U.S.C. 1604(k)). However, timber harvest may be used on such lands as a tool to achieve other multiple-use purposes. Examples of the reasons may include, but are not limited to (1) maintaining or recruiting mature forest characteristics in areas where final regeneration of a stand is not planned, (2) experimental forests, (3) restoring meadow or rangeland ecosystems being replaced by forest succession, (4) cutting trees to promote the safety of forest users, and (5) removal of understory trees to reduce hazardous ladder fuels in frequent fire return interval forests. For suitability of areas except for timber production, consistency of a project or activity should be evaluated in one of two ways: (1) The project or activity is a use identified in the plan as suitable for the location where the project or activity is to occur. (2) The project or activity is not a use identified in the plan as suitable for the location, but the responsible official documents the reasons the use is appropriate for that location.

Comment: Provisions for timber harvest on land classified as unsuitable for timber production. Some respondents stated that salvage sales or other harvest needed for multiple-use objectives other than timber production should not be allowed on lands unsuitable for timber production, because no sideboards have been set in regulation that constrain how this would be done or what trade-offs would or would not be acceptable.

Response: Timber harvest for salvage sales or sales necessitated to protect other multiple-uses is authorized by the NFMA at 16 U.S.C. 1604(k). The NFMA sets forth sideboards that apply to timber harvest whatever its purpose (16 U.S.C. 1604(g)(3)). Under the final rule, the responsible official may only authorize timber harvest to achieve other multiple-use purposes if such a project is consistent with the protection of soil, watershed, fish, wildlife, recreation, and aesthetic resources.

Section 219.13—Objections to Plans, Plan Amendments, or Plan Revisions

This section establishes the objection process by which the public can challenge plans, plan revisions, or plan amendments. The Department retains the 2007 proposed rule wording in the final rule.

The Committee of Scientists, in its 1999 report, recommended that the Forest Service seek to harmonize its administrative appeal process with those of other Federal agencies. The Committee of Scientists said a pre-decisional process would encourage internal Forest Service discussion, encourage multi-agency collaboration, and encourage public interest groups to collaborate and work out differences. Therefore, to be more consistent with the Bureau of Land Management (BLM) and to improve public participation efforts, the Department is adopting the pre-decisional objection process (sec. 219.13) to replace the appeals process. The objection process complements the public participation process because the objectors and the reviewing officer can collaboratively work through concerns before a responsible official approves a plan.

The 30-day objection period specified in this final rule is the same amount of time provided in the BLM protest process. The final rule does not specify a time limit for agency responses; the final rule has adopted the BLM requirement that the reviewing officer promptly render a decision on the objection. It is in the interest of the Agency to render a decision promptly to move forward.

Because Federal agencies have other avenues for working together to resolve concerns, under the final rule Federal entities are not able to file objections. This exclusion of Federal agencies is a long-standing procedure of Forest Service administrative appeal provisions at 36 CFR parts 215, 217, and 251, subpart C. The Forest Service is required to involve other Federal agencies, at section 219.9(a)(2) of the final rule. The objection process is intended primarily for state and local governments, tribes, and members of the public. The objection process is not suitable to resolve concerns between sister agencies in the executive branch. The Forest Service anticipates that other agencies will be able to resolve most planning concerns informally. Where it is anticipated that there may be concerns that are not easily resolved by planners and other agency personnel, various techniques such as establishments of memorandums of understanding or local working agreements may be used. Some agencies also have regulatory authority; for example, EPA has review authority pursuant to section 309 of the Clean Air Act. These techniques and authorities are successfully being used now and will continue to be used in the future.

Comment: Inherent benefits of a post-decisional appeal process. A respondent said the Forest Service failed to consider the inherent value of a post decisional appeal process. One value is that it addresses a need for citizens to air legitimate objections to final decisions in forest plans so that litigation remains a last option. The respondent cited studies of the Agency's appeal process for projects that concluded ''most appeals appear to be justified,'' and that the program has been ''an internal mechanism for clarifying the legal requirements and for testing the soundness of decisions and the appropriateness of current policies and procedures.'' Another respondent noted that only a post-decisional appeal process provides the public a way of objecting based on a review of the actual decision that has been made. A respondent said the current appeals process has a proven track record of resolving conflicts, encouraging collaboration, and preventing unnecessary litigation. One respondent noted there is nothing that prevents a deciding officer from seeking objections before issuing a decision, then also receiving post-decisional appeals. The appeal and objection processes are compatible, and it is essential and efficient to keep the appeal process, because the review of contentious decisions by higher level officials before contention leads to litigation.

Response: The Agency believes a predecisional objections process in the final rule will be a natural continuation of the collaborative planning process in a way that participants have opportunities to discuss the proposed decision, consider options, and air concerns and opinions throughout the process. The Agency believes objections are a more effective mechanism for testing soundness of decisions. Consistency with law and policy can still be tested, contentious issues discussed, and litigation avoided. The Agency believes that having both a predecisional objection process and a post decisional appeals process would be redundant. The objection process is expected to resolve many potential conflicts by encouraging resolution before a plan, plan amendment, or plan revision is approved.

Under the 36 CFR part 217 appeal process, the Agency and the public expend significant human and financial resources in fulfillment of procedural requirements. Often an appeal leads to a polarized relationship because there is no real incentive to address natural resource issues and there is a squandering of human and financial capital, often without long-lasting solutions to problems. With a predecisional objection process, the responsible official, the reviewing officer, and the objector have the

opportunity to seek reasonable solutions to conflicting views of plan components before a responsible official approves a plan, plan amendment, or plan revision. The objection process allows discretion for joint problem solving to resolve issues. This approach fits well with a collaborative approach to planning.

In its 1999 report, the COS identified potential problems associated with the post-decisional appeals process. These problems included isolating agency decisionmakers from one another just at the time when internal discussion about the upcoming plan decision might be useful, inhibiting multi-agency collaboration, and giving mixed and inconsistent incentives for involvement of interest groups. The COS recommended that in line with a collaborative planning process, the Agency should consider an approach that minimizes incentives to appeal plan decisions. The committee recommended that if the appeals process proves problematic, influencing parties to disregard their agreements or to leave the table before agreements are reached, and then the Agency might consider shifting to a predecisional process similar to that used by the U.S. Department of the Interior, Bureau of Land Management (BLM). Having considered these recommendations, and the experience of the Agency with the post decisional appeals process, the Agency believes the objection process will provide a more consistent process among agencies and further a collaborative approach to planning.

Comment: Time allowed for filing objections and responding to objections. Several respondents commented that the 30-day period for filing objections is not adequate to review the plan and supporting documentation and prepare an objection. Some respondents recommended that the rule allow at least 60 days for filing objections. Some also recommended that the rule include a specific time frame for making decisions on objections. One respondent noted that it is a double standard for having a time limit for filing objections, but none for responding to them. Another respondent had the impression that the 30-day objection period replaced the 3-month public review and comment period required by the NFMA.

Response: Under the final rule, the Agency would use the objection process to resolve many potential conflicts by encouraging resolution before a plan, plan amendment, or plan revision is approved. The 30-day objection period specified in these alternatives is the same amount of time provided in the BLM protest process. The Agency does not specify a time limit for agency responses. It is in the interest of all parties for the reviewing officer to promptly render a decision on the objection, but a specific time limit could potentially shortcut joint discussions among the parties aimed at resolving issues raised in the objections. The Agency believes that 30 days is adequate for developing and filing an objection, considering that objections would follow a collaborative public participation process including a 90-day comment period on the proposed plan, plan amendment, or plan revision found at section 219.9(b)(1)(ii).

Comment: Designating a lead objector and content of objections. A respondent said the objection process is too burdensome, because it requires someone be designated the lead objector, who is the only person the Forest Service will contact or talk with. The process limits opportunities for resolution because it does not require a notice of all objections received and limits who can request meetings. The process places too stringent requirements on the content of objections, mere disagreement with the decisions should be adequate basis for an objection.

Response: Section 219.13(b)(1) of the final rule calls for a designated lead objector when an objection is filed by more than one person. Under the final rule, a person may object if they believe a policy has been violated, but a person is free to object simply because they disagree with the decision. The requirements of section 219.13(b) allow the reviewing officer to know why an objector objects as well as what the objector recommends for change. About the lead objector, the final rule says ''The reviewing officer may communicate directly with the lead objector and is not required to notify the other listed objectors of the objection response or any other written correspondence related to the single objection.'' The procedures for communication through the designated lead objector are a reasonable accommodation to effectively work with a multi-party objection and quickly resolve issues. However, the reviewing officer may meet with all objectors if the reviewing officer desires. The reviewing officer has the discretion to manage the process.

Comment: Participation in objections by interested parties. Some respondents recommended that the rule include provisions for participation in the objections process by parties who did not file an objection, but who participated in the planning process and may be affected by the response to objections filed by others.

Response: Under the final rule, the reviewing officer is not precluded from involving parties in addition to the objector(s) when making a response to the objection. Interested individuals and organizations could also object to plans, plan amendments, or plan revisions.

Comment: Decisions by responsible officials at a higher level than the Chief. Per section 219.13(a)(2) of the proposed rule, there is no opportunity for administrative review (objections) if the plan decision is made by a Department official at a level higher than the Chief of the Forest Service. One respondent recommended that officials higher than the Chief should not be allowed to make plan decisions, because the objection process should be available to allow for resolution of disagreements at the local level rather than through the courts.

Response: The final rule retains this exception at section 219.13(a)(2) to opportunities for objecting to a plan. There is no higher level to object to when the decision is made at a level higher than the Forest Service Chief. It is anticipated that plan decisions will rarely be made at a level above the regional forester.

Section 219.14—Effective Dates and Transition

This section specifies when a plan, plan amendment, or plan revision will take effect as well as how responsible officials may modify ongoing planning efforts to conform to the requirements of the final rule. For clarity, the Department modified this section from the transition wording in the 2007 proposed rule. The final rule sets up the time requirement for EMS establishment in section 219.5; therefore, the discussion of EMS establishment has been removed from this section.

In paragraph (a) of this section, the Department retains wording about effective dates from the 2007 proposed rule. In paragraph (b) of this section, the Department retains the definition of initiation from the 2007 proposed rule. In paragraph (b)(1) of this section, the Department retains the requirement of the proposed rule that plan development and plan revisions initiated after the effective date of the final rule must conform to the requirements of this subpart.

In paragraph (b)(2) of this section, the Department discusses the requirements of plan amendments during transition under the final rule. This section combined discussions from the proposed rule in paragraph (d)(2), paragraph (d)(3), and (e)(2) of this section in the proposed rule. As in the proposed rule, for 3 years the responsible official may amend plans

under the 1982 rule procedures or under the final rule procedures. As in the proposed rule, all plan amendments initiated after 3 years must conform to the final rule. Plan amendments initiated prior to that 3 year deadline may use the 1982 procedures.

The Department added a new provision in paragraph (b)(2) in this section that allows responsible officials to use the objections process of the final rule or the appeal procedures if they amend under the 1982 procedures. In the proposed rule, plan amendments previously initiated were permitted to use either administrative review process. This addition permits plan amendments using the 1982 rule procedures a choice. Furthermore, this is not a substantive change.

In paragraph (b)(3) of this section, the Department discusses plan development, plan amendments, or plan revisions initiated before this rule. This is a modification of paragraph (e) of this section in the proposed rule. To deal with plan revisions efforts that relied on the 2005 rule, the Department added a provision at paragraph (b)(3)(ii) in this section that the responsible official is not required to start over on a finding that process conforms to the final rule.

The Department removed paragraph (f) from this section about management indicator species (MIS) from the final rule, because the revised paragraph (b)(4) of this section eliminates the need to discuss MIS as a separate topic. In paragraph (b)(4) of this section, the Department discusses plans developed, amended, or revised using the 1982 rule. For those national forests and grasslands, the 1982 rule is without effect. Therefore, no obligations remain from the 1982 rule including MIS, except those that are specifically in the plan. There has been uncertainty about the application of provisions of the 1982 rule, particularly with respect to obligations about MIS (69 FR 58055, Sept. 29, 2004). For such plans, species obligations may be met by considering data and analysis relating to habitat unless the plan specifically requires population monitoring or population surveys. The appropriate scale for species monitoring is the plan area, however, plan provisions define species obligations. There has been some confusion about the intent of paragraph (f) in this section of the proposed rule. The Department believes this change in wording at revised paragraph (b)(4) is not a substantive change but clarifies the Department's intent.

Comment: Management indicator species (MIS) population monitoring. Some respondents expressed concern that monitoring of habitat conditions may not reflect population trends in a timely enough manner and stated that baseline data is needed if sampling programs are to be used for trend analysis. Other respondents stated that provisions of the proposed rule allowing monitoring of habitat rather than populations, using a range of methods, and specifying that MIS monitoring is not required for individual projects conflicts with the MIS case law developed under the 1982 rule and may not survive legal challenge. Other respondents urged that wildlife monitoring requirements not be optional (as was proposed in sec. 219.14(f)), otherwise the forest managers and public would have no way of knowing whether wildlife goals have been met.

Response: Management indicator species monitoring is not discussed in the final rule. The 1982 rule is not in effect (sec. 219.14(b)(4)). No obligations remain from that regulation (including MIS), except those that are specifically in a plan. Considerable uncertainty has arisen in the past, specifically due to conflicting court decisions related to MIS monitoring. The responsible official may use information on habitat unless the plan specifically requires population monitoring or population surveys in meeting any species monitoring obligations of the plan. Site-specific monitoring or surveying of a proposed project or activity area is not required, unless required by the plan. Any monitoring would likely be carried out at the scale most appropriate to the species within the national forest, grassland, prairie, or other administratively comparable unit. The Agency does not dictate a specific required approach to species monitoring under plans. Rather, the responsible official is allowed flexibility to carry out monitoring approaches that may include either habitat or population monitoring and a variety of sampling programs to estimate or approximate population trends for species. The need for timely feedback on trends and the existence of baseline data may be a consideration as the responsible official adopts a specific monitoring protocol.

Comment: Transition—when existing plans come under the new rule. A respondent did not support allowing forests to come under the new rule as soon as they established an EMS. This respondent said that a plan should conform to the rule it was developed under until a new plan had been prepared and approved.

Response: The final rule provides a process for developing, revising, or amending plans only. Except as specifically provided, none of the requirements of this final rule, apply to projects or activities. Since all current plans were developed under the 1982 rule, the respondent is actually recommending that the 1982 rule remain in effect until a plan is revised under the final rule. However, there is nothing to ''conform to'' unless one of these planning actions is initiated, and the Department sees no advantage to delaying use of the new rule. The 1982 rule is not in effect. It is the Agency position that requirements for project and activity planning should be set in the Agency directives, not in a rule. The requirement for establishing an EMS as a precondition to approving plan development, plan amendments, or plan revisions has been removed from the final rule.

Comment: Continuing plan revisions initiated under the 2005 rule. One respondent urged that the rule include a specific provision allowing units that had begun revision under the 2005 rule to use the work and material prepared to date, because forcing these units to start the process over again would be a significant waste of agency resources and would frustrate the local community because their past efforts would be ignored.

Response: The final rule requires the responsible official to make a finding that the plan, plan amendment, or plan revision process conforms to the requirements of the planning rule (sec. 219.14(b)(3)). The final rule discusses the transition for plan development, amendments, or revisions previously initiated, and allows for these planning processes to build on the work done to date rather than requiring that the responsible official to start over. The Agency believes that, although some adjustments may be needed, the public involvement, analysis, and documentation developed thus far through planning efforts conducted under the 2005 rule can and should be used as these plans are completed under the final rule.

Section 219.15—Severability

This section explains that it is the Department's intent that the individual provisions of this rule be severable from each other. The Department retains the 2007 proposed rule wording in the final rule.

Section 219.16—Definitions

This section sets out and defines the special terms used in the final rule. Additional discussion in response to comments about definitions is found in Appendix G of the EIS. The Department added two terms to the definitions section of the final rule. These additional terms are ''Alaska Native

Corporations,'' and ''timber harvest.'' The Alaska Native Corporation addition is based on public comment from those entities pointing out that the proposed rule did not include them. The addition of the timber harvest definition is needed to deal with the additional timber provisions added at section 219.12 in response to comments on that section. Based on public comment, the definition of the term ''adaptive management'' has been modified to agree with the definition used in the ongoing NEPA rule-making. The Department changed the definition of environmental management systems (EMS) to let EMS be multi-unit, regional, or national in scope.

The Department removed the definition of species from section 219.16 for two reasons: (1) During review of the proposed rule other agencies pointed out that there may be confusion between statutes and our proposed definition for species; (2) the definition of species-of-concern in the final rule demonstrates the Department's intent to deal with the species for which management actions may be necessary to prevent listing under the Endangered Species Act.

Compliance With the Endangered Species Act of 1973, as Amended

As part of the environmental analysis, a biological assessment was prepared for threatened, endangered, and proposed species and designated and proposed critical habitat for the 2008 final land management planning rule. The assessment concluded that the planning rule will have no effect to these species as it establishes the procedures for land management planning and does not authorize, fund, permit, or carry out any habitat or resource disturbing activities. The rule does not affect, modify, mitigate, or reduce the requirement for the Forest Service to conference or consult on projects or activities that it funds, permits, or carries out that may affect threatened, endangered, or proposed species or their designated or proposed critical habitat. Section seven consultation will be conducted for actions authorized, funded, or carried out by the Forest Service as required by regulation or policy (50 CFR 402.01, FSM 2671.45). Based on this assessment it was determined that the final rule, in itself, will have no effect on threatened, endangered, or proposed species or to designated or proposed critical habitat. Since initiating the development of the current proposed planning rule, the Forest Service has consulted with NOAA Fisheries and USFWS to discuss the programmatic nature of the planning rule, to explain the Forest Service's tiered decision making framework (regulation, land management plan, and project) and to consider the potential of the 2008 planning rule to affect threatened, endangered and proposed species, and designated and proposed critical habitat. We concluded this consultation by reaching a ''no effect'' determination. The Forest Service was aware that USFWS and NOAA Fisheries had agreed with the Forest Service's similar ''no effect'' determination for the 2000 planning rule. However, the Forest Service ultimately concluded that, because our ''no effect'' determination fulfilled the consultation requirement, it was not necessary to submit this biological assessment to the NOAA Fisheries or USFWS seeking agreement with our finding. Copies of the biological assessment and appendices are in the analysis record for this rule and are available on request.

Regulatory Certifications

Regulatory Impact

The Agency reviewed this rule under U.S. Department of Agriculture (Department) procedures and Executive Order 12866 issued September 30, 1993, as amended by Executive Order 13422 on regulatory planning and review and the major rule provisions of the Small Business Regulatory Enforcement and Fairness Act (5 U.S.C. 800). The Agency has determined this rule is not an economically significant rule. This rule will not have an annual effect of $100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor State or local governments. This rule will neither interfere with an action taken or planned by another agency nor raise new legal or policy issues. Finally, this rule will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. However, because of the extensive interest in NFS planning and decisionmaking, this rule has been designated as significant and, therefore, is subject to Office of Management and Budget review under Executive Order 13422.

An analysis was conducted to compare the costs and benefits of carrying out the rule to the baseline—the 2000 rule. This analysis is posted on the World Wide Web/Internet at *http://www.fs.fed.us/emc/nfma/2008_planning_rule.html*, along with other documents associated with this rule. The 2000 rule was used as the baseline because it is the no action alternative (alternative B).

Quantitative differences between this rule, and the other alternatives were also estimated. Alternatives included alternative A (the 2005 rule), alternative C (the 1982 rule), alternative D (2005 rule modified to not include the EMS requirement), alternative E (2005 rule modified to not include EMS and explicitly to include timber requirements in the rule and standards as plan components). Primary sources of data used to estimate the costs and benefits of the 2000 rule are from the results of a 2002 report entitled ''A Business Evaluation of the 2000 and Proposed NFMA Rules'' produced by the Inventory and Monitoring Institute of the Forest Service. The report is also identified as the ''2002 NFMA Costing Study,'' or simply as the ''costing study.'' The costing study used a business modeling process to identify and compare major costs for the 2000 rule. The main source of data used to approximate costs under the 1982 rule is from a 2002 report to Congress on planning costs, along with empirical data and inferences from the costing study.

The cost-benefit analysis focuses on key activities in land management planning for which costs can be estimated under the 1982 rule, the 2000 rule, the rule selected in this ROD, and the other alternative rules. The key activities for which costs were analyzed include regional guides, collaboration, consideration of science, evaluation of the sustainability of decisions, and diversity requirements under the National Forest Management Act of 1976 (16 U.S.C. 1600 *et seq.*), monitoring, evaluation, and the resolution of disputes about the proposed plan decisions through the administrative processes of appeals and objections. The rule would reduce the cost of producing a plan or revision by shortening the length of the planning process and by providing the responsible official with more flexibility to decide the scope and scale of the planning process.

The rule would require a comprehensive evaluation during plan development and plan revision that would be updated at least every 5 years. Some upfront planning costs, such as analyzing and developing plan components, and documenting the land management planning process, are anticipated to shift to monitoring and evaluation to better document existing conditions and trends of past management activities and natural events when preparing a comprehensive evaluation of the plan under the rule.

Based on costs that can be quantified, carrying out this final rule is expected to have an estimated annual average cost savings of $25.6 million when

compared to the 2000 rule, and an estimated annual average savings of $0.2 million when compared to estimates of the 1982 rule. From this cost-benefit analysis, the estimated costs for carrying out the rule are expected to be lower than the 2000 rule.

Agency costs for carrying out the rule, the 2000 rule, 1982 rule, and other alternative rules were discounted at 3 percent and 7 percent discount rates for the 15-year period from 2008 to 2022; then annualized costs were calculated for these alternatives. By using 3 percent discount rate, the annualized cost for the rule was estimated at $104.6 million, while the annualized cost for the 2000 rule was $129 million and for the 1982 rule was $104 million. The Agency expects the rule to have an annualized cost savings of about $24.6 million when compared with the 2000 rule, and an estimated annualized cost of $0.3 million when compared with estimates of the 1982 rule.

When using a 7 percent discount rate for the same timeframe, the results show the annualized cost estimate for the rule is $104.5 million and the estimated annualized cost for the 2000 rule and the 1982 rule are $127.2 million and $103.2 million respectively. Based on these annualized cost estimates at 7 percent discount rate, use of this rule is expected to have an annualized cost savings of $22.7 million when compared with the 2000 rule, and an estimated annualized cost of $1.3 million when compared with estimates of the 1982 rule. This quantitative assessment indicates a cost savings for the Agency using the rule.

Although the annual average costs of the rule and the 1982 rule are relatively similar, there are substantive and significant differences in how planning dollars are invested annually. Under the 1982 rule, 68 percent of all estimated annual planning expenditures are committed to plan revision processes, rather than monitoring and evaluation. An estimated 75 percent of annual planning expenditures would fund plan revisions under the 2000 rule. Under this rule, an estimated 51 percent of annual planning dollars would be expended for plan revisions, leaving nearly half of annual expenses for monitoring and evaluation that would keep plans more current and adaptive to new information and changing conditions.

One of the criticisms of planning under the 1982 rule is that these plans were very unresponsive to new information and changing conditions. Once a revised plan is approved, the useful life of a plan EIS is very short when compared to the 15-year useful life of the revised plan. Spending a significant higher amount of available planning dollars on monitoring and evaluation over the life of the plan, instead of a large up front cost on plan revision and an EIS, will create more dynamic and adaptive plans. This will fulfill the purpose and need much more than the 1982 or 2000 rule.

This rule has also been considered in light of the Regulatory Flexibility Act, as amended (5 U.S.C. 601 *et seq.*), and it has been determined this action will not have a significant economic impact on a substantial number of small business entities as defined by the Regulatory Flexibility Act. Therefore, a regulatory flexibility analysis is not required for this rule. The rule imposes no requirements on either small or large entities. Rather, the rule sets out the process the Forest Service will follow in land management planning for the NFS. The rule should provide opportunities for small businesses to become involved in the national forest, grassland, prairie, or other comparable administrative unit plan approval. Moreover, by streamlining the land management planning process, the rule should benefit small businesses through more timely decisions that affect outputs of products and services.

Environmental Impacts

This rule sets up the administrative procedures to guide development, amendment, and revision of NFS land management plans. This rule, like earlier planning rules, does not dictate how administrative units of the NFS are to be managed. The Agency does not expect this rule will directly affect the mix of uses on any or all units of the NFS. Section 31.12 of FSH 1909.15 excludes from documentation in an EA or EIS ''rules, regulations, or policies to establish Servicewide administrative procedures, program processes, or instruction.'' The Agency believes this rule falls squarely within this category of actions and that no extraordinary circumstances exist that would require preparation of an EA or an EIS. However, because of the district court's March 30, 2007 decision in *Citizens for Better Forestry* v. *USDA* and the Agency's desire to reform the planning process, the Agency has prepared an EIS considering several alternatives to the rule and potential environmental impacts of those alternatives. The EIS is available on the Internet at *http://www.fs.fed.us/emc/nfma/2008_planning_rule.html*. The EIS explains there are no environmental impacts resulting from promulgating this rule.

Energy Effects

This rule has been reviewed under Executive Order 13211, issued May 18, 2001, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.'' It has been determined this rule does not constitute a significant energy action as defined in Executive Order 13211. This rule would guide the development, amendment, and revision of NFS land management plans. These plans are strategic documents that provide the guidance for making future project or activity-level resource management decisions. As such, these plans will address access requirements associated with energy exploration and development within the framework of multiple-use, sustained-yield management of the surface resources of the NFS lands. These land management plans might identify major rights-of-way corridors for utility transmission lines, pipelines, and water canals. Although these plans might consider the need for such facilities, they do not authorize constructing them; therefore, the rule and the plans developed under it do not have energy effects within the meaning of Executive Order 13211. The effects of constructing such lines, pipelines, and canals are, of requirement, considered on a case-by-case basis as specific construction proposals. Consistent with Executive Order 13211, direction to incorporate consideration of energy supply, distribution, and use in the planning process will be in the Agency's administrative directives for carrying out the rule.

Controlling Paperwork Burdens on the Public

In accord with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or reporting requirements for the objection process were previously approved by the Office of Management and Budget (OMB) and assigned control number 0596–0158, expiring on December 31, 2006, for the 2005 rule. The OMB has extended this approval, effective January 31, 2007, using the same control number. This extension was made after the Forest Service provided the public an opportunity to comment on the extension as required by the Paperwork Reduction Act (71 FR 40687, July 18, 2006). The Forest Service received one comment about the extension. The information required by section 219.13 is needed for an objector to explain the objection being made to a proposed land management plan, plan amendment, or plan revision. This rule retains but simplifies the objection process set up

in the 2000 rule. The rule removes the requirements previously provided in the 2000 rule for interested parties, publication of objections, and formal requests for meetings (36 CFR 219.32 of 2000 rule). These changes have resulted in a small reduction in burden hours approved by OMB for the 2000 rule.

Federalism

The Agency has considered this rule under the requirements of Executive Order 13132 issued August 4, 1999, ''Federalism.'' The Agency has made an assessment the rule conforms to the Federalism principles set out in this Executive Order; would not impose any compliance costs on the states; and would not have substantial direct effects on the states, on the relation between the national government and the states, nor on distributing power and responsibilities among the various levels of government. Therefore, the Agency concludes this rule does not have Federalism implications. Moreover, section 219.9 of this rule shows sensitivity to Federalism concerns by requiring the responsible official to meet with, and provide opportunities for involvement of, State and local governments in the planning process.

In the spirit of Executive Order 13132, the Agency consulted with State and local officials, including their national representatives, early in the process of developing the regulation. The Agency has consulted with the Western Governors' Association and the National Association of Counties to get their views on a preliminary draft of the 2002 proposed rule. The Western Governors' Association supported the general intent to create a regulation that works and placed importance on the quality of collaboration to be provided when the Agency puts into effect the regulation. Agency representatives also contacted the International City and County Managers Association, National Conference of State Legislators, The Council of State Governments, Natural Resources Committee of the National Governors Association, U.S. Conference of Mayors, and the National League of Cities to share information about the 2002 proposed rule before its publication. Based on comments received on the 2002 proposed rule, the Agency has determined more consultation was not needed with State and local governments for promulgating the 2005 rule, and thus this rule. State and local governments were encouraged to comment on the proposed rule during this rulemaking process.

Consultation With Indian Tribal Governments

Pursuant to Executive Order 13175 of November 6, 2000, ''Consultation and Coordination With Indian Tribal Governments,'' the Agency has assessed the impact of this rule on Indian Tribal governments and has determined the rule does not significantly or uniquely affect communities of Indian Tribal governments. The rule deals with the administrative procedures to guide the development, amendment, and revision of NFS land management plans and, as such, has no direct effect about the occupancy and use of NFS land. At section 219.9(a)(3), the rule requires consultation with federally recognized Tribes when conducting land management planning. The Agency has also determined this rule does not impose substantial direct compliance costs on Indian Tribal governments. This rule does not mandate Tribal participation in NFS planning. Rather, the rule imposes an obligation on Forest Service officials to consult early with Tribal governments and to work cooperatively with them where planning issues affect Tribal interests.

No Takings Implications

This rule has been analyzed in accord with the principles and criteria in Executive Order 12630 issued March 15, 1988, and it has been determined the rule does not pose the risk of a taking of private property.

Civil Justice Reform

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule (1) preempts all State and local laws and regulations that conflict with this rule or would impede the carrying out of this rule; (2) does not retroactively affect existing permits, contracts, or other instruments authorizing the occupancy and use of NFS lands; and (3) does not require administrative proceedings before parties could file suit in court challenging its provisions.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), the Agency has assessed the effects of this rule on State, local, and Tribal governments and the private sector. This rule does not compel the spending of $100 million or more by any State, local, or Tribal governments or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

List of Subjects in 36 CFR Part 219

Administrative practice and procedure, Environmental impact statements, Indians, Intergovernmental relations, National forests, Reporting and recordkeeping requirements, Science and technology.

■ Therefore, for the reasons set forth in the preamble, part 219 of title 36 of the Code of Federal Regulations is revised to read as follows:

PART 219—PLANNING

Subpart A—National Forest System Land Management Planning

Sec.

219.1 Purpose and applicability.
219.2 Levels of planning and planning authority.
219.3 Nature of land management planning.
219.4 National Environmental Policy Act compliance.
219.5 Environmental management systems.
219.6 Evaluations and monitoring.
219.7 Developing, amending, or revising a plan.
219.8 Application of a new plan, plan amendment, or plan revision.
219.9 Public participation, collaboration, and notification.
219.10 Sustainability.
219.11 Role of science in planning.
219.12 Suitable uses and provisions required by NFMA.
219.13 Objections to plans, plan amendments, or plan revisions.
219.14 Effective dates and transition.
219.15 Severability.
219.16 Definitions.

Subpart B—[Reserved]

Authority: 5 U.S.C. 301; 16 U.S.C. 1604, 1613.

Subpart A—National Forest System Land Management Planning

§ 219.1 Purpose and applicability.

(a) The rules of this subpart set forth a process for land management planning, including the process for developing, amending, and revising land management plans (also referred to as plans) for the National Forest System (NFS), as required by the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976 (16 U.S.C. 1600 *et seq.*), hereinafter referred to as NFMA. This subpart also describes the nature and scope of plans and plan components. This subpart is applicable to all units of the NFS as defined by 16 U.S.C. 1609 or subsequent statute.

(b) Consistent with the Multiple-Use Sustained-Yield Act of 1960 (16 U.S.C. 528–531) (MUSYA), the overall goal of managing the NFS is to sustain the multiple uses of its renewable resources

in perpetuity while maintaining the long-term productivity of the land. Resources are to be managed so they are utilized in the combination that will best meet the needs of the American people. Maintaining or restoring the health of the land enables the NFS to provide a sustainable flow of uses, benefits, products, services, and visitor opportunities.

(c) The Chief of the Forest Service shall establish planning procedures for this subpart for plan development, plan amendment, or plan revision in the Forest Service Directive System.

§ 219.2 Levels of planning and planning authority.

Planning occurs at multiple organizational levels and geographic areas.

(a) *National.* The Chief of the Forest Service is responsible for national planning, such as preparation of the Forest Service Strategic Plan required under the Government Performance and Results Act of 1993 (5 U.S.C. 306; 31 U.S.C. 1115–1119; 31 U.S.C. 9703–9704), which is integrated with the requirements of the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act (NFMA). The Strategic Plan establishes goals, objectives, performance measures, and strategies for management of the NFS, as well as the other Forest Service mission areas.

(b) *Forest, grassland, prairie, or other comparable administrative unit.*

(1) Land management plans provide broad guidance and information for project and activity decisionmaking in a national forest, grassland, prairie, or other comparable administrative unit. The supervisor of the national forest, grassland, prairie, or other comparable administrative unit is the responsible official for development and approval of a plan, plan amendment, or plan revision for lands under the responsibility of the supervisor, unless a regional forester, the Chief, or the Secretary chooses to act as the responsible official.

(2) When plans, plan amendments, or plan revisions are prepared for more than one administrative unit, a unit supervisor identified by the regional forester, or the regional forester, the Chief, or the Secretary may be the responsible official. Two or more responsible officials may undertake joint planning over lands under their respective jurisdictions.

(3) The appropriate station director must concur with that part of a plan applicable to any experimental forest within the plan area.

(c) *Projects and activities.* The supervisor or district ranger is the responsible official for project and activity decisions, unless a higher-level official chooses to act as the responsible official. Requirements for project or activity planning are established in the Forest Service Directive System. Except as specifically provided, none of the requirements of this subpart apply to projects or activities.

(d) *Developing, amending, and revising plans*—(1) *Plan development.* If a new national forest, grassland, prairie, or other administrative unit of the NFS is established, the regional forester, or a forest, grassland, prairie, or other comparable unit supervisor identified by the regional forester must either develop a plan for the unit or amend or revise an existing plan to apply to the lands within the new unit.

(2) *Plan amendment.* The responsible official may amend a plan at any time.

(3) *Plan revision.* The responsible official must revise the plan if the responsible official concludes that conditions within the plan area have significantly changed. Unless otherwise provided by law, a plan must be revised at least every 15 years.

§ 219.3 Nature of land management planning.

(a) *Principles of land management planning.* Land management planning is an adaptive management process that includes social, economic, and ecological evaluation; plan development, plan amendment, and plan revision; and monitoring. The aim of planning is to produce responsible land management for the NFS based on useful and current information and guidance. Land management planning guides the Forest Service in fulfilling its responsibilities for stewardship of the NFS to best meet the needs of the American people.

(b) *Force and effect of plans.* Plans developed in accord with this subpart generally contain desired conditions, objectives, and guidance for project and activity decisionmaking in the plan area. Plans do not grant, withhold, or modify any contract, permit, or other legal instrument; subject anyone to civil or criminal liability; or create any legal rights. Plans typically do not approve or execute projects and activities. Decisions with effects that can be meaningfully evaluated (40 CFR 1508.23) typically are made when projects and activities are approved.

§ 219.4 National Environmental Policy Act compliance.

(a) In accord with 16 U.S.C. 1604(g)(1) this subpart clarifies how the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4346) (hereinafter referred to as NEPA) applies to NFS land management planning.

(b) Approval of a plan, plan amendment, or plan revision, under the authority of this subpart, will be done in accord with the Forest Service NEPA procedures.

(c) Nothing in this subpart alters the application of NEPA to proposed projects and activities.

(d) Monitoring and evaluations, including those required by § 219.6, may be used or incorporated by reference, as appropriate, in applicable NEPA documents.

§ 219.5 Environmental management systems.

The responsible official will establish an environmental management system (EMS) or conform to a multi-unit, regional, or national level EMS. The scope of an EMS will include, at the minimum, land management environmental aspects as determined by the responsible official or established in a multi-unit, regional, or national level EMS. An EMS may also include environmental aspects unrelated to land management if deemed appropriate.

(a) An EMS may be established independently of the planning process.

(b) The Chief of the Forest Service shall establish procedures in the Forest Service Directive System to ensure that an appropriate EMS(s) is in place. The responsible official may determine whether and how to change and improve an EMS, consistent with those procedures.

(c) The EMS must conform to the consensus standard developed by the International Organization for Standardization (ISO) and adopted by the American National Standards Institute (ANSI) as ''ISO 14001: Environmental Management Systems—Specification With Guidance For Use'' (ISO 14001). The ISO 14001 describes EMSs and outlines the elements of an EMS.

(d) No project or activity approved under a plan developed, amended, or revised under the requirements of this subpart may be implemented until the responsible official establishes an EMS or the responsible official conforms to a multi-unit, regional, or national level EMS as required by this section.

§ 219.6 Evaluations and monitoring.

(a) *Evaluations.* The responsible official shall keep the plan set of documents up to date with evaluation reports, which will reflect changing conditions, science, and other relevant information. The following three types

of evaluations are required for land management planning: Comprehensive evaluations for plan development and revision, evaluations for plan amendment, and annual evaluations of monitoring information. The responsible official shall document evaluations in evaluation reports, make these reports available to the public as required in § 219.9, and include these reports in the plan set of documents (§ 219.7(a)(1)). Evaluations under this section should be commensurate to the level of risk or benefit associated with the nature and level of expected management activities in the plan area.

(1) *Comprehensive evaluations.* These evaluate current social, economic, and ecological conditions and trends that contribute to sustainability, as described in § 219.10. Comprehensive evaluations and comprehensive evaluation reports must be updated at least every 5 years to reflect any substantial changes in conditions and trends since the last comprehensive evaluation. A comprehensive evaluation report may be combined with other documents, including NEPA documents. The responsible official must ensure that comprehensive evaluations, including any updates necessary, include the following elements:

(i) *Area of analysis.* The area(s) of analysis must be clearly identified.

(ii) *Conditions and trends.* The current social, economic, and ecological conditions and trends and substantial changes from previously identified conditions and trends must be described based on available information, including monitoring information, surveys, assessments, analyses, and other studies as appropriate. Evaluations may build upon existing studies and evaluations.

(2) *Evaluation for a plan amendment.* An evaluation for a plan amendment must analyze the issues relevant to the purposes of the amendment and may use the information in comprehensive evaluations relevant to the plan amendment. When a plan amendment is made contemporaneously with, and only applies to, a project or activity decision, the analysis prepared for the project or activity may be used to satisfy the requirements for an evaluation for an amendment.

(3) *Annual evaluation of the monitoring information.* Monitoring results must be evaluated annually and in accord with paragraph (b)(2) of this section.

(b) *Monitoring.* The plan must describe the monitoring program for the plan area. Monitoring information in the plan document or set of documents may be changed and updated as appropriate, at any time. Such changes and updates are administrative corrections (§ 219.7(b)) and do not require a plan amendment or revision.

(1) The plan-monitoring program shall be developed with public participation and take into account:

(i) Financial and technical capabilities;

(ii) Key social, economic, and ecological performance measures relevant to the plan area; and

(iii) The best available science.

(2) The plan-monitoring program shall provide for:

(i) Monitoring to assist in evaluating the effects of each management system to the end that it will not produce substantial and permanent impairment of the productivity of the land;

(ii) Monitoring of the degree to which on-the-ground management is maintaining or making progress toward the desired conditions and objectives for the plan; and

(iii) Adjustment of the monitoring program as appropriate to account for unanticipated changes in conditions.

(3) The responsible official may conduct monitoring jointly with others, including but not limited to, Forest Service units, Federal, State or local government agencies, federally recognized Indian Tribes, Alaska Native Corporations, and members of the public.

§ 219.7 Developing, amending, or revising a plan.

(a) *General planning requirements*—(1) *Plan documents or set of documents.* The responsible official must maintain a plan document or set of documents for the plan. A plan document or set of documents includes, but is not limited to evaluation reports; documentation of public involvement; the plan, including applicable maps; applicable plan approval documents; applicable NEPA documents, if any; applicable EMS documents, if any; and the monitoring program for the plan area.

(2) *Plan components.* Plan components may apply to all or part of the plan area. A plan should include the following components:

(i) *Desired conditions.* Desired conditions are the social, economic, and ecological attributes toward which management of the land and resources is to be directed. Desired conditions are aspirations and are not commitments or final decisions approving projects and activities, and may be achievable only over a long time period.

(ii) *Objectives.* Objectives are concise projections of measurable, time-specific intended outcomes. The objectives for a plan are the means of measuring progress toward achieving or maintaining desired conditions. Like desired conditions, objectives are aspirations and are not commitments or final decisions approving projects and activities.

(iii) *Guidelines.* Guidelines provide information and guidance for project and activity decisionmaking to help achieve desired conditions and objectives. Guidelines are not commitments or final decisions approving projects and activities.

(iv) *Suitability of areas.* Areas of each NFS unit are identified as generally suitable for various uses (§ 219.12). An area may be identified as generally suitable for uses that are compatible with desired conditions and objectives for that area. An area may be identified as generally not suitable for uses that are not compatible with desired conditions and objectives for that area. Identification of an area as generally suitable or not suitable for a use is guidance for project and activity decisionmaking and not a commitment nor a final decision approving projects and activities. Uses of specific areas are approved through project and activity decisionmaking.

(v) *Special areas.* Special areas are areas in the NFS designated because of their unique or special characteristics. Special areas such as botanical areas or significant caves may be designated, by the responsible official in approving a plan, plan amendment, or plan revision. Such designations are not final decisions approving projects and activities. The plan may also recognize special areas designated by statute or through a separate administrative process in accord with NEPA requirements (§ 219.4) and other applicable laws.

(3) *Standards.* A plan may include standards as a plan component. Standards are constraints upon project and activity decisionmaking and are explicitly identified in a plan as ''standards.'' Standards are established to help achieve the desired conditions and objectives of a plan and to comply with applicable laws, regulations, Executive orders, and agency directives.

(4) *Changing plan components.* Plan components may be changed through plan amendment or revision or through an administrative correction in accord with § 219.7(b).

(5) *Planning authorities.* The responsible official has the discretion to determine whether and how to change the plan, subject to the requirement that the plan be revised at least every 15 years. A decision by a responsible official about whether or not to initiate the plan amendment or plan revision

process and what issues to consider for plan development, plan amendment, or plan revision is not subject to objection under this subpart (§ 219.13).

(6) *Plan process.* (i) Required evaluation reports, plans, plan amendments, and plan revisions must be prepared by an interdisciplinary team; and

(ii) Unless otherwise provided by law, all NFS lands possessing wilderness characteristics must be considered for recommendation as potential wilderness areas during plan development or revision.

(7) *Developing plan options.* In the collaborative and participatory process of land management planning, the responsible official may use an iterative approach in development of a plan, plan amendment, and plan revision in a way that plan options are developed and narrowed successively. The key steps in this process shall be documented in the plan set of documents.

(b) *Administrative corrections.* Administrative corrections may be made at any time, and are not plan amendments or revisions. Administrative corrections include the following:

(1) Corrections and updates of data and maps;

(2) Corrections of typographical errors or other non-substantive changes;

(3) Changes in the monitoring program and monitoring information (§ 219.6(b));

(4) Changes in timber management projections or other projections of uses or activities; and

(5) Other changes in the plan document or set of documents that are not substantive changes in the plan components.

(c) *Approval document.* The responsible official must record approval of a new plan, plan amendment, or plan revision in a plan approval document, which must include:

(1) The reasons for the approval of the plan, plan amendment, or plan revision;

(2) Concurrence by the appropriate station director with any part of the plan applicable to any experimental forest in the plan area, in accord with § 219.2(b)(3);

(3) A statement of how the plan, plan amendment, or plan revision applies to approved projects and activities, in accord with § 219.8;

(4) Science documentation, in accord with § 219.11; and

(5) The effective date of the approval (§ 219.14(a)).

If a plan approval document is, in whole or part, the culmination of an EA or EIS process, the plan approval document or pertinent part thereof, must be prepared in accord with Forest Service NEPA procedures.

§ 219.8 Application of a new plan, plan amendment, or plan revision.

(a) *Application of a new plan, plan amendment, or plan revision to existing authorizations and approved projects or activities.* (1) The responsible official must include in any document approving a plan amendment or revision a description of the effects of the plan, plan amendments, or plan revision on existing occupancy and use authorized by permits, contracts, or other instruments carrying out approved projects and activities. If not expressly excepted, approved projects and activities must be consistent with applicable plan components, as provided in paragraph (e) of this section. Approved projects and activities are those for which a responsible official has signed a decision document.

(2) Any modifications of such permits, contracts, or other instruments needed to make them consistent with applicable plan components as developed, amended, or revised are subject to valid existing rights. Such modifications should be made as soon as practicable following approval of a new plan, plan amendment, or plan revision.

(b) *Application of a new plan, plan amendment, or plan revision to authorizations and projects or activities subsequent to plan approval.* Decisions approving projects and activities subsequent to approval of a plan, plan amendment, or plan revision must be consistent with the plan as provided in paragraph (e) of this section.

(c) *Application of a plan.* Plan provisions remain in effect until the effective date of a new plan, plan amendment, or plan revision.

(d) *Effect of new information on projects or activities.* Although new information will be considered in accord with agency NEPA procedures, nothing in this subpart requires automatic deferral, suspension, or modification of approved decisions in light of new information.

(e) *Ensuring project or activity consistency with plans.* Projects and activities must be consistent with the applicable plan components. If an existing (paragraph (a) of this section) or proposed (paragraph (b) of this section) use, project, or activity is not consistent with the applicable plan components, the responsible official may take one of the following steps, subject to valid existing rights:

(1) Modify the project or activity to make it consistent with the applicable plan components;

(2) Reject the proposal or terminate the project or activity, subject to valid existing rights; or

(3) Amend the plan contemporaneously with the approval of the project or activity so that it will be consistent with the plan as amended. The amendment may be limited to apply only to the project or activity.

§ 219.9 Public participation, collaboration, and notification.

The responsible official must use a collaborative and participatory approach to land management planning, in accord with this subpart and consistent with applicable laws, regulations, and policies, by engaging the skills and interests of appropriate combinations of Forest Service staff, consultants, contractors, other Federal agencies, federally recognized Indian Tribes, Alaska Native Corporations, State or local governments, or other interested or affected communities, groups, or persons.

(a) *Providing opportunities for participation.* The responsible official must provide opportunities for the public to collaborate and participate openly and meaningfully in the planning process, taking into account the discrete and diverse roles, jurisdictions, and responsibilities of interested and affected parties. Specifically, as part of plan development, plan amendment, and plan revision, the responsible official shall involve the public in developing and updating the comprehensive evaluation report, establishing the components of the plan, and designing the monitoring program. The responsible official has the discretion to determine the methods and timing of public involvement opportunities.

(1) *Engaging interested individuals and organizations.* The responsible official must provide for and encourage collaboration and participation by interested individuals and organizations, including private landowners whose lands are in, adjacent to, or otherwise affected by future management actions in the plan area.

(2) *Engaging State and local governments and Federal agencies.* The responsible official must provide opportunities for the coordination of Forest Service planning efforts undertaken in accord with this subpart with those of other resource management agencies. The responsible official also must meet with and provide early opportunities for other government agencies to be involved, to

collaborate, and to participate in planning for NFS lands. The responsible official should seek assistance, where appropriate, from other State and local governments, Federal agencies, and scientific and academic institutions to help address management issues or opportunities.

(3) *Engaging Tribal governments and Alaska Native Corporations.* The Forest Service recognizes the Federal Government's trust responsibility for federally recognized Indian Tribes. The responsible official must consult with, invite, and provide opportunities for any federally recognized Indian Tribes and Alaska Native Corporations that may be affected by the planning process to collaborate and participate. In working with federally recognized Indian Tribes, the responsible official must honor the government-to-government relationship between Tribes and the Federal Government. The responsible official should seek assistance, where appropriate, from federally recognized Indian Tribes and Alaska Native Corporations to help address management issues or opportunities.

(b) *Public notification.* The following public notification requirements apply to plan development, amendment, or revision, except when a plan amendment is approved contemporaneously with approval of a project or activity and the amendment applies only to the project or activity, in a way that 36 CFR part 215 or part 218, subpart A, applies:

(1) *When formal public notification is provided.* Public notification must be provided at the following times:

(i) Initiation of development of a plan, plan amendment, or plan revision

(ii) Commencement of the 90-day comment period on a proposed plan, plan amendment, or plan revision

(iii) Commencement of the 30-day objection period prior to approval of a plan, plan amendment, or plan revision

(iv) Approval of a plan, plan amendment, or plan revision

(v) Adjustment to conform to this subpart of a planning process for a plan, plan amendment, or plan revision initiated under the provisions of a previous planning regulation

(2) *How public notice is provided.* Public notice must be provided in the following ways:

(i) All required public notices applicable to a new plan, plan revision, or any ongoing plan revision as provided in § 219.14(b) must be published in the **Federal Register** and newspaper(s) of record.

(ii) Required notifications that are associated with a plan amendment or any ongoing plan amendment as provided in § 219.14(b) and that apply to one plan must be published in the newspaper(s) of record. Required notifications that are associated with plan amendments and any ongoing plan amendments (as provided at § 219.14(b)) and that apply to more than one plan must be published in the **Federal Register**.

(iii) Public notification of evaluation reports and monitoring program changes may be made in a way deemed appropriate by the responsible official.

(3) *Content of the public notice.* Public notices must contain the following information:

(i) *Content of the public notice for initiating a plan development, plan amendment, or plan revision.* The notice must inform the public of the documents available for review and how to obtain them; provide a summary of the need to develop a plan or change a plan; invite the public to comment on the need for change in a plan; identify any other need for change in a plan that they feel should be addressed during the planning process; provide an estimated schedule for the planning process, including the time available for comments; and inform the public how to submit comments.

(ii) *Content of the public notice for a proposed plan, plan amendment, or plan revision.* The notice must inform the public of the availability of the proposed plan, plan amendment, or plan revision, including any relevant evaluation report; the commencement of the 90-day comment period; and the process for submitting comments.

(iii) *Content of the public notice for a plan, plan amendment, or plan revision before approval.* The notice must inform the public of the availability of the plan, plan amendment, or plan revision; any relevant evaluation report; and the commencement of the 30-day objection period; and the process for objecting.

(iv) *Content of the public notice for approval of a plan, plan amendment, or plan revision.* The notice must inform the public of the availability of the approved plan, plan amendment, or plan revision, the approval document, and the effective date of the approval (§ 219.14(a)).

(v) *Content of the public notice for an ongoing planning process.* The notice must state whether or not a planning process initiated before April 21, 2008 (§ 219.14(b)) will be adjusted to conform to this subpart.

§ 219.10 Sustainability.

Sustainability, for any unit of the NFS, has three interrelated and interdependent elements: Social, economic, and ecological. A plan can contribute to sustainability by creating a framework to guide on-the-ground management of projects and activities; however, a plan by itself cannot ensure sustainability. Agency authorities, the nature of a plan, and the capabilities of the plan area are some of the factors that limit the extent to which a plan can contribute to achieving sustainability.

(a) *Sustaining social and economic systems.* The overall goal of the social and economic elements of sustainability is to contribute to sustaining social and economic systems within the plan area. To understand the social and economic contributions that National Forest System lands presently make, and may make in the future, the responsible official, in accordance with § 219.6, must evaluate relevant economic and social conditions and trends as appropriate during plan development, plan amendment, or plan revision.

(b) *Sustaining ecological systems.* The overall goal of the ecological element of sustainability is to provide a framework to contribute to sustaining native ecological systems by providing appropriate ecological conditions to support diversity of native plant and animal species in the plan area. This will satisfy the statutory requirement to provide for diversity of plant and animal communities based on the suitability and capability of the specific land area in order to meet overall multiple-use objectives (16 U.S.C. 1604(g)(3)(B)). Procedures developed pursuant to § 219.1(c) for sustaining ecological systems must be consistent with the following:

(1) *Ecosystem diversity.* Ecosystem diversity is the primary means by which a plan contributes to sustaining ecological systems. Plan components must establish a framework to provide the characteristics of ecosystem diversity in the plan area.

(2) *Species diversity.* If the responsible official determines that provisions in plan components, in addition to those required by paragraph (b)(1) of this section, are needed to provide appropriate ecological conditions for specific threatened and endangered species, species-of-concern, and species-of-interest, then the plan must include additional provisions for these species, consistent with the limits of Agency authorities, the capability of the plan area, and overall multiple use objectives.

§ 219.11 Role of science in planning.

(a) The responsible official must take into account the best available science. For purposes of this subpart, taking into

account the best available science means the responsible official must:

(1) Document how the best available science was taken into account in the planning process within the context of the issues being considered;

(2) Document that the science was appropriately interpreted and applied.

(b) To meet the requirements of paragraph (a) of this section, the responsible official may use independent peer review, a science advisory board, or other review methods to evaluate the consideration of science in the planning process.

§ 219.12 Suitable uses and provisions required by NFMA.

(a) *Suitable uses*—(1) *Identification of suitable land uses.* National Forest System lands are generally suitable for a variety of multiple uses, such as outdoor recreation, range, timber, watershed, and wildlife and fish purposes. The responsible official, as appropriate, shall identify areas within a National Forest System unit as generally suitable for uses that are compatible with desired conditions and objectives for that area. The responsible official may identify lands within the plan area as generally not suitable for uses that are not compatible with desired conditions and objectives for that area. Identification of an area as generally suitable or not suitable for a use is guidance for project and activity decisionmaking and not a permanent land designation, and is subject to change through plan amendment or plan revision.

A plan approval document may include project and activity decisions including prohibitions of a specific use (or uses) under 36 CFR part 261 or authorization of a specific use (or uses) when the supporting analysis and plan approval document for the prohibition or use is in accordance with the Forest Service NEPA procedures.

(2) *Identification of lands not suitable for timber production.* (i) The responsible official must identify lands within the plan area as not suitable for timber production (§ 219.16) if:

(A) Statute, Executive Order, or regulation prohibits timber production on the land; or

(B) The Secretary of Agriculture or the Chief of the Forest Service has withdrawn the land from timber production; or

(C) The land is not forest land (as defined at § 219.16); or

(D) Timber production would not be compatible with the achievement of desired conditions and objectives established by the plan for those lands; or

(E) The technology is not available for conducting timber harvest without causing irreversible damage to soil, slope, or other watershed conditions or substantial and permanent impairment of the productivity of the land; or

(F) There is no reasonable assurance that such lands can be adequately restocked within 5 years after final regeneration harvest.

(ii) This identification in a plan is not a final decision compelling, approving, or prohibiting projects and activities. A final determination of suitability for timber production is made through project and activity decisionmaking.

(3) *Lands suitable for timber production.* After considering physical, ecological, social, economic, and other pertinent factors to the extent feasible, a Responsible Official may establish timber production as an objective in a plan for any lands not identified in paragraph (a)(2)(i) of this section. The responsible official must review lands not suited for timber production at least once every 10 years, or as otherwise prescribed by law, to determine their suitability for timber production. As a result of this 10-year review, timber production may be established as a plan objective for any lands found to be suitable for such purpose through amendment or revision of the plan.

(4) *Other lands where trees may be harvested for multiple use values other than timber production.* Designation of lands as not suitable for timber production does not preclude the harvest of trees on those lands for salvage, sanitation, or other multiple use purposes. Except for lands described at paragraph (a)(2)(i)(E) of this section, timber harvest may be used as a tool to assist in achieving or maintaining applicable desired conditions or objectives.

(b) *Plan provisions for resource management.* A plan should include provisions for the following:

(1) Limitations on even-aged timber harvest methods, including provisions to require harvest in a manner consistent with the protection of soil, watershed, fish, wildlife, recreation, and aesthetic resources and the regeneration of the timber resource, including requirements that even-aged harvest may occur only upon a finding that it is appropriate and that clearcutting may occur only upon a finding that it is the optimum method to meet the objectives and requirements of the plan;

(2) Maximum size openings created by timber harvest according to geographic areas, forest types, or other suitable classifications for areas to be cut in one regeneration harvest operation. This limit may be less than, but will not exceed, 60 acres for the Douglas-fir forest type of California, Oregon, and Washington; 80 acres for the southern yellow pine types of Alabama, Arkansas, Georgia, Florida, Louisiana, Mississippi, North Carolina, South Carolina, Oklahoma, and Texas; 100 acres for the hemlock-Sitka spruce forest type of coastal Alaska; and 40 acres for all other forest types. The plan must allow for exceeding its limitations on maximum size openings after appropriate public notice and review by the supervisor of the responsible official who normally would approve the harvest proposal. The plan maximum size openings must not apply to the size of areas harvested as a result of natural catastrophic conditions such as fire, insect and disease attack, or windstorm;

(3) Provisions that cut blocks, patches, or strips that are shaped and blended to the extent practicable with the natural terrain;

(4) Provisions for maintaining or restoring soil and water resources, including protection for streams, streambanks, shorelines, lakes, wetlands, and other bodies of water from detrimental changes in water temperatures, blockages of water courses, and deposits of sediment, when management activities are likely to seriously and adversely affect water conditions or fish habitat;

(5) Provisions that timber harvest projects be considered through interdisciplinary review, assessing the potential environmental, biological, aesthetic, engineering, and economic impacts on the sale area, as well as the consistency of the sale with the multiple use of the general area, and that the harvesting system used is not selected primarily because it will give the greatest dollar return or the greatest unit output of timber;

(6) Provisions that there is reasonable assurance that lands can be adequately restocked within 5 years after final regeneration harvest; and

(7) Provisions that soil, slope, or other watershed conditions will not be irreversibly damaged by timber harvest.

(c) *Forest Service Directive System procedures.* (1) The Chief of the Forest Service must include in the Forest Service Directive System procedures for estimating the quantity of timber that can be removed annually in perpetuity on a sustained-yield basis in accordance with 16 U.S.C. 1611.

(2) The Chief of the Forest Service must include in the Forest Service Directive System requirements assuring that even-aged stands of trees scheduled for harvest during the planning period have generally reached culmination of mean annual increment of growth. This

requirement applies only to regeneration harvest of even-aged stands on lands identified as suitable for timber production and where timber production is a management purpose for the harvest.

(3) Forest Service Directive System procedures to fulfill the requirements of this paragraph shall be adopted following public involvement as described in 36 CFR part 216.

§ 219.13 Objections to plans, plan amendments, or plan revisions.

(a) *Opportunities to object.* Before approving a plan, plan amendment, or plan revision, the responsible official must provide the public 30 calendar days for pre-decisional review and the opportunity to object. Federal agencies may not object under this subpart. During the 30-day review period, any person or organization, other than a Federal agency, who participated in the planning process through the submission of written comments, may object to a plan, plan amendment, or plan revision according to the procedures in this section, except in the following circumstances:

(1) When a plan amendment is approved contemporaneously with a project or activity decision and the plan amendment applies only to the project or activity, in a way that the administrative review process of 36 CFR part 215 or part 218, subpart A, applies instead of the objection process established in this section; or

(2) When the responsible official is an official in the Department of Agriculture at a level higher than the Chief of the Forest Service, in a way that there is no opportunity for administrative review.

(b) *Submitting objections.* The objection must be in writing and must be filed with the reviewing officer within 30 days following the publication date of the legal notice in the newspaper of record of the availability of the plan, plan amendment, or plan revision. Specific details will be in the Forest Service Directive System. An objection must contain:

(1) The name, mailing address, and telephone number of the person or entity filing the objection. Where a single objection is filed by more than one person, the objection must indicate the lead objector to contact. The reviewing officer may appoint the first name listed as the lead objector to act on behalf of all parties to the single objection when the single objection does not specify a lead objector. The reviewing officer may communicate directly with the lead objector and is not required to notify the other listed objectors of the objection response or any other written correspondence related to the single objection;

(2) A statement of the issues, the parts of the plan, plan amendment, or plan revision to which the objection applies, and how the objecting party would be adversely affected; and

(3) A concise statement explaining how the objector believes that the plan, plan amendment, or plan revision is inconsistent with law, regulation, or policy or how the objector disagrees with the decision and providing any recommendations for change.

(c) *Responding to objections.* (1) The reviewing officer (§ 219.16) has the authority to make all procedural determinations related to the objection not specifically explained in this subpart, including those procedures necessary to ensure compatibility, to the extent practicable, with the administrative review processes of other Federal agencies. The reviewing officer must promptly render a written response to the objection. The response must be sent to the objecting party by certified mail, return receipt requested.

(2) The response of the reviewing officer shall be the final decision of the Department of Agriculture on the objection.

(d) *Use of other administrative review processes.* Where the Forest Service is a participant in a multi-Federal agency effort that would otherwise be subject to objection under this subpart, the reviewing officer may waive the objection procedures of this subpart and instead adopt the administrative review procedure of another participating Federal agency. As a condition of such a waiver, the responsible official for the Forest Service must have agreement with the responsible official of the other agency or agencies that a joint agency response will be provided to those who file for administrative review of the multi-agency effort.

(e) *Compliance with the Paperwork Reduction Act.* The information collection requirements associated with submitting an objection have been approved by the Office of Management and Budget and assigned control number 0596–0158.

§ 219.14 Effective dates and transition.

(a) *Effective dates.* A plan, plan amendment, or plan revision is effective 30 days after publication of notice of its approval (§ 219.9(b)), except when a plan amendment is approved contemporaneously with a project or activity and applies only to the project or activity, in a way that 36 CFR part 215 or part 218, subpart A, apply.

(b) *Transition.* For the purposes of this section, initiation means that the Agency has provided notice under § 219.9(b) or issued a notice of intent or other public notice announcing the commencement of the process to develop a plan, plan amendment, or plan revision.

(1) *Plan development and plan revisions.* Plan development and plan revisions initiated after April 21, 2008 must conform to the requirements of this subpart, except that the plan for the Tongass National Forest may be revised once under this subpart or the planning regulations in effect before November 9, 2000.

(2) *Plan Amendments.* With respect to plans approved or revised pursuant to the planning regulation in effect before November 9, 2000 (see 36 CFR parts 200 to 299, Revised as of July 1, 2000), a 3-year transition period for plan amendments begins on April 21, 2008. During the transition period, plan amendments may continue using the provisions of the planning regulation in effect before November 9, 2000, or may conform to the requirements of this subpart. If the responsible official uses the provisions of the prior planning regulations, the responsible official may elect to use either the administrative appeal and review procedures at 36 CFR part 217 in effect prior to November 9, 2000 (See 36 CFR parts 200 to 299, Revised as of July 1, 2000), or the objection procedures of this subpart. Plan amendments initiated after the transition period must conform to the requirements of this subpart.

(3) *Plan development, plan amendments, or plan revisions underway before this rule.* (i) For plan development, plan amendments, or plan revisions that had been underway before April 21, 2008, using the provisions of the planning regulations in effect before November 9, 2000 (See 36 CFR parts 200 to 299, Revised as of July 1, 2000) the responsible official is not required to halt the process and start over but may complete those processes in conformance of the provisions of those regulations or in conformance to the requirements of this subpart.

(ii) For plan development plan amendment, or plan revisions that had been underway before April 21, 2008 using the provisions of the planning regulations in effect January 5, 2005 (See 36 CFR parts 200 to 299, Revised as of July 1, 2005) the responsible official is not required to start over under this subpart upon a finding that the plan, plan amendment, or plan revision process undertaken before April 21, 2008 conforms to the requirements of this subpart.

(iii) The responsible official may elect to use either the administrative appeal and review procedures at 36 CFR part 217 in effect prior to November 9, 2000 (See 36 CFR parts 200 to 299, Revised as of July 1, 2000), or the objection procedures of this subpart, except when a plan amendment is approved contemporaneously with a project or activity and applies only to the project or activity, in a way that 36 CFR part 215 or part 218, subpart A, apply.

(4) *Plans developed, amended, or revised using the provisions of the planning rule in effect prior to November 9, 2000.* For units with plans developed, amended, or revised using the provisions of the planning rule in effect prior to November 9, 2000 (See 36 CFR parts 200 to 299, Revised as of July 1, 2000), that rule is without effect. No obligations remain from that regulation, except those that are those specifically in the plan.

§ 219.15 Severability.

In the event that any specific provision of this rule is deemed by a court to be invalid, the remaining provisions shall remain in effect.

§ 219.16 Definitions.

Definitions of the special terms used in this subpart are set out in alphabetical order.

Adaptive management: A system of management practices based on clearly identified outcomes and monitoring to determine if management actions are meeting desired outcomes, and if not, to facilitate management changes that will best ensure that outcomes are met or re-evaluated. Adaptive management stems from the recognition that knowledge about natural resource systems is sometimes uncertain.

Alaska Native Corporations: The regional, urban, and village native corporations formed under the Alaska Native Claims Settlement Act of 1971.

Area of analysis: The geographic area within which ecosystems, their components, or their processes are evaluated during analysis and development of one or more plans, plan revisions, or plan amendments. This area may vary in size depending on the relevant planning issue. For a plan, an area of analysis may be larger than a plan area. For development of a plan amendment, an area of analysis may be smaller than the plan area. An area of analysis may include multiple ownerships.

Diversity of plant and animal communities: The distribution and relative abundance or extent of plant and animal communities and their component species, including tree species, occurring within an area.

Ecological conditions: Components of the biological and physical environment that can affect diversity of plant and animal communities and the productive capacity of ecological systems. These components could include the abundance and distribution of aquatic and terrestrial habitats, roads and other structural developments, human uses, and invasive, exotic species.

Ecosystem diversity: The variety and relative extent of ecosystem types, including their composition, structure, and processes within all or a part of an area of analysis.

Environmental management system: The part of the overall management system that includes organizational structure, planning activities, responsibilities, practices, procedures, processes, and resources for developing, implementing, achieving, reviewing, and maintaining environmental policy.

Federally recognized Indian Tribe: An Indian or Alaska Native Tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

Forest land: Land at least 10 percent occupied by forest trees of any size or formerly having had such tree cover and not currently developed for non-forest uses. Lands developed for non-forest use include areas for crops; improved pasture; residential or administrative areas; improved roads of any width and adjoining road clearing; and power line clearings of any width.

ISO 14001: A consensus standard developed by the International Organization for Standardization and adopted by the American National Standards Institute that describes environmental management systems and outlines the elements of an environmental management system.

Newspaper(s) of record: The principal newspapers of general circulation annually identified and published in the **Federal Register** by each regional forester to be used for publishing notices as required by 36 CFR 215.5. The newspaper(s) of record for projects in a plan area is (are) the newspaper(s) of record for notices related to planning.

Plan: A document or set of documents that integrates and displays information relevant to management of a unit of the National Forest System.

Plan area: The National Forest System lands covered by a plan.

Productivity: The capacity of National Forest System lands and their ecological systems to provide the various renewable resources in certain amounts in perpetuity. For the purposes of this subpart it is an ecological, not an economic, term.

Public participation: Activities that include a wide range of public involvement tools and processes, such as collaboration, public meetings, open houses, workshops, and comment periods.

Responsible official: The official with the authority and responsibility to oversee the planning process and to approve plans, plan amendments, and plan revisions.

Reviewing officer: The supervisor of the responsible official. The reviewing officer responds to objections made to a plan, plan amendment, or plan revision prior to approval.

Species-of-concern: Species for which the responsible official determines that management actions may be necessary to prevent listing under the Endangered Species Act.

Species-of-interest: Species for which the responsible official determines that management actions may be necessary or desirable to achieve ecological or other multiple use objectives.

Timber harvest: The removal of trees for wood fiber use and other multiple-use purposes.

Timber production: The purposeful growing, tending, harvesting, and regeneration of regulated crops of trees to be cut into logs, bolts, or other round sections for industrial or consumer use.

Visitor opportunities: The spectrum of settings, landscapes, scenery, facilities, services, access points, information, learning-based recreation, wildlife, natural features, cultural and heritage sites, and so forth available for National Forest System visitors to use and enjoy.

Wilderness: Any area of land designated by Congress as part of the National Wilderness Preservation System that was established in the Wilderness Act of 1964 (16 U.S.C. 1131–1136).

Subpart B—[Reserved]

Dated: April 9, 2008.

Mark Rey,

Under Secretary, NRE.

[FR Doc. E8–8085 Filed 4–18–08; 8:45 am]

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Federal Register

Monday,
April 21, 2008

Part IV

The President

Proclamation 8240—To Take Certain Actions Under the African Growth and Opportunity Act and the Generalized System of Preferences and for Other Purposes

Federal Register
Vol. 73, No. 77
Monday, April 21, 2008

Presidential Documents

Title 3—

The President

Proclamation 8240 of April 17, 2008

To Take Certain Actions Under the African Growth and Opportunity Act and the Generalized System of Preferences and for Other Purposes

By the President of the United States of America

A Proclamation

1. Section 506A(a)(1) of the Trade Act of 1974, as amended (the ''1974 Act'') (19 U.S.C. 2466a(a)(1)), as added by section 111(a) of the African Growth and Opportunity Act (title I of Public Law 106–200) (AGOA), authorizes the President to designate a country listed in section 107 of the AGOA (19 U.S.C. 3706) as a ''beneficiary sub-Saharan African country'' if the President determines that the country meets the eligibility requirements set forth in section 104 of the AGOA (19 U.S.C. 3703), as well as the eligibility criteria set forth in section 502 of the 1974 Act (19 U.S.C. 2462).

2. Section 104 of the AGOA authorizes the President to designate a country listed in section 107 of the AGOA as an ''eligible sub-Saharan African country'' if the President determines that the country meets certain eligibility requirements.

3. Section 112(c) of the AGOA, as amended in section 6002 of the Africa Investment Incentive Act of 2006 (Division D, Title VI, Public Law 109–432) (19 U.S.C. 3721(c)), provides special rules for certain apparel articles imported from ''lesser developed beneficiary sub-Saharan African countries.''

4. Pursuant to section 104 of the AGOA and section 506A(a)(1) of the 1974 Act, I have determined that the Republic of Togo (Togo) meets the eligibility requirements set forth or referenced therein, and I have decided to designate Togo as an eligible sub-Saharan African country and as a beneficiary sub-Saharan African country.

5. I further determine that Togo satisfies the criterion for treatment as a ''lesser developed beneficiary sub-Saharan African country'' under section 112(c)(5)(D) of the AGOA, as amended.

6. Presidential Proclamation 8114 of March 19, 2007, implemented section 112 of the AGOA, as amended. Technical corrections to the Harmonized Tariff Schedule of the United States (HTS) are necessary to implement the intended tariff treatment.

7. Pursuant to sections 501 and 502(a) of the 1974 Act (19 U.S.C. 2461, 2462(a)), the President is authorized to designate countries as beneficiary developing countries, and to designate any beneficiary developing country as a least-developed beneficiary developing country, for purposes of the Generalized System of Preferences (GSP) program.

8. In Executive Order 12302 of April 1, 1981, the President designated the Solomon Islands as a beneficiary developing country for purposes of the GSP program. Pursuant to section 502(a)(2) of the 1974 Act, and having considered the factors set forth in sections 501 and 502(c), I have determined that the Solomon Islands should be designated as a least-developed beneficiary developing country for purposes of the GSP program.

9. In calendar year 2006, imports from Jamaica under subheading 2202.90.37 of the HTS exceeded the relevant competitive need limitation (CNL) set forth in 19 U.S.C. 2463(c)(2). Pursuant to section 503(c)(2)(A) of the 1974 Act, where imports of articles exceed the relevant CNL in a calendar year, the President shall withdraw duty-free treatment for such article by July 1 of the following year and modify the HTS accordingly.

10. On January 6, 1987, Colombia was granted a waiver of the CNL for imports under HTS subheading 1701.11.05. Despite the existing waiver of the CNL, on July 5, 2001, duty-free treatment was withdrawn in error for imports from Colombia under HTS subheading 1701.11.05 because import levels exceeded the relevant CNL in calendar year 2000. A technical correction to the HTS is required to reflect the waiver of the CNL for imports from Colombia under HTS subheading 1701.11.05.

11. In Presidential Proclamation 8097 of December 29, 2006, I modified the HTS pursuant to section 1206(a) of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 3006(a)) to conform the HTS to the International Convention on the Harmonized Commodity Description and Coding System (the ''Convention''). Additional conforming changes to the HTS are required to implement the intended tariff treatment.

12. Section 604 of the 1974 Act (19 U.S.C. 2483), as amended, authorizes the President to embody in the HTS the substance of relevant provisions of that Act, or other acts affecting import treatment, and of actions taken thereunder.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States of America, including but not limited to section 104 of the AGOA and title V and section 604 of the 1974 Act (19 U.S.C. 2461–67, 2483), do proclaim that:

(1) Togo is designated as an eligible sub-Saharan African country and as a beneficiary sub-Saharan African country for purposes of the AGOA.

(2) In order to reflect this designation in the HTS, general note 16(a) to the HTS is modified by inserting in alphabetical sequence in the list of beneficiary sub-Saharan African countries ''Republic of Togo,'' effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the thirtieth day after the date of this proclamation.

(3) For purposes of section 112(c) of the AGOA, as amended, Togo is a lesser developed beneficiary sub-Saharan African country.

(4) In order to provide the tariff treatment intended under section 112 of the AGOA, as amended, the HTS is modified as set forth in the Annex to this proclamation.

(5) The Solomon Islands is designated as a least-developed beneficiary developing country for purposes of the GSP program.

(6) In order to reflect this designation in the HTS, general note 4(b)(i) is modified by adding in alphabetical order ''The Solomon Islands,'' effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the sixty-fifth day after the date of this proclamation.

(7) For purposes of the GSP program, in order to provide the intended tariff treatment for imports from Jamaica, under HTS subheading 2202.90.37, general note 4(d) is modified by adding in numerical order ''2202.90.37'' and by inserting ''Jamaica'' next to ''2202.90.37.''

(8) For purposes of the GSP program, in order to provide the intended tariff treatment for imports from Colombia, under HTS subheading 1701.11.05, general note 4(d) is modified by deleting ''Colombia'' from the list of countries enumerated next to HTS subheading ''1701.11.05.''

(9) In order to conform the HTS to the Convention, additional U.S. note 3(d) to subchapter XX of chapter 98 and additional U.S. note 4(d) to subchapter XXI of chapter 98 of the HTS are each modified by deleting ''5402.10.30, 5402.10.60,'' each place it occurs and by inserting in lieu thereof ''5402.11.30, 5402.11.60, 5402.19.30, 5402.19.60,'' in each case.

(10) Any provisions of previous proclamations and Executive Orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of April, in the year of our Lord two thousand eight, and of the Independence of the United States of America the two hundred and thirty-second.

Billing code 3195–01–P

ANNEX

TO IMPLEMENT TECHNICAL MODIFICATIONS IN THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after October 1, 2007, subchapter XIX of chapter 98 of the Harmonized Tariff Schedule of the United States is modified as set forth herein:

1. U.S. note 2 to such subchapter is modified--

(A) by modifying the text of subdivision (a) to read as follows:

"Imports of apparel articles under subheadings 9819.11.09, 9819.11.12 and 9819.15.10, and under any other subheading from among subheadings 9819.15.15 through 9819.15.42 which may be applicable to imported apparel articles from eligible beneficiary sub-Saharan African countries pursuant to determinations of the United States International Trade Commission, shall be limited during each 1-year period enumerated in subdivision (b) of this note to the applicable percentage, in aggregate square meter equivalents, of all apparel articles imported into the United States in the preceding 12-month period for which data are available. Any apparel article eligible for entry under both subheading 9819.11.09 and a subheading from among subheadings 9819.15.10 through 9819.15.42 shall be entered under the appropriate subheading from among subheadings 9819.15.10 through 9819.15.42.";

(B) by deleting from subdivision (b) of such note the expression "subheading 9819.11.09" at its first instance and by inserting in lieu thereof "subheadings 9819.11.09 and 9819.15.10, and under any other subheading from among subheadings 9819.15.15 through 9819.15.42 which may be applicable to imported apparel articles from eligible beneficiary sub-Saharan African countries pursuant to determinations of the United States International Trade Commission,"; and

(C) by deleting from subdivision (e) of such note the expression "subheading 9819.11.09" and by inserting in lieu thereof "subheadings 9819.11.09, 9819.11.12 and 9819.15.10, and under any other subheading from among subheadings 9819.15.15 through 9819.15.42 which may be applicable to imported apparel articles from eligible beneficiary sub-Saharan African countries pursuant to determinations of the United States International Trade Commission".

2. U.S. note 5 to such subchapter is modified--

(A) by deleting subdivision (a) and paragraphs (a)(i) and (a)(ii) of such note and by inserting in lieu thereof the following new subdivision:

"(a) For purposes of subheadings 9819.15.10 through 9819.15.42 and the superior text thereto, subject to the provisions of this note and to U.S. note 2 to this subchapter, apparel articles are eligible for entry under these provisions if they contain a fabric or yarn produced in beneficiary sub-Saharan African countries that has been determined by the United States International Trade Commission (USITC) to be available in commercial quantities for use in lesser developed sub-Saharan African beneficiary countries, pursuant to the terms of section 112(c) of the African Growth and Opportunity Act (AGOA), as amended (19 U.S.C. 3721(c)), provided that all other requirements of this subchapter and applicable Customs regulations are met. For the purposes of this note, apparel articles contain a fabric or yarn if each article, or the component of each such article that determines the article's classification for tariff purposes, is considered to be an article or component of that fabric or yarn. The USITC will determine and announce, in notices published in the *Federal Register* under the terms of section 112(c)(2) of the AGOA, the aggregate quantity of each fabric or yarn covered by a previous affirmative USITC determination described in the first sentence of this subdivision that was used to produce apparel articles in lesser developed sub-Saharan African beneficiary countries enumerated in U.S. note 2(d) to this subchapter that were entered into the United States during each applicable 1-year period starting on October 1 in a year and ending on September 30 in the subsequent year. No apparel articles shall be entered under subheadings 9819.15.10 through 9819.15.42 after the close of September 30, 2012."; and

(B) by deleting subdivision (b) of such note.

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2	(869–064–00002–5)	8.00	Jan. 1, 2008
3 (2006 Compilation and Parts 100 and 102)	(869–062–00003–1)	35.00	[1] Jan. 1, 2007
4	(869–064–00004–1)	13.00	Jan. 1, 2008
5 Parts:			
1–699	(869–064–00005–0)	63.00	Jan. 1, 2008
700–1199	(869–064–00006–8)	53.00	Jan. 1, 2008
1200–End	(869–062–00007–3)	61.00	Jan. 1, 2007
6	(869–062–00008–1)	10.50	Jan. 1, 2007
7 Parts:			
1–26	(869–064–00009–2)	47.00	Jan. 1, 2008
27–52	(869–064–00010–6)	52.00	Jan. 1, 2008
53–209	(869–064–00011–4)	40.00	Jan. 1, 2008
210–299	(869–064–00012–2)	65.00	Jan. 1, 2008
300–399	(869–064–00013–1)	49.00	Jan. 1, 2008
400–699	(869–064–00014–9)	45.00	Jan. 1, 2008
700–899	(869–064–00015–7)	46.00	Jan. 1, 2008
900–999	(869–062–00016–2)	60.00	Jan. 1, 2007
1000–1199	(869–064–00017–3)	22.00	Jan. 1, 2008
1200–1599	(869–064–00018–1)	64.00	Jan. 1, 2008
1600–1899	(869–064–00019–0)	67.00	Jan. 1, 2008
1900–1939	(869–064–00020–3)	31.00	Jan. 1, 2008
1940–1949	(869–064–00021–1)	50.00	Jan. 1, 2008
1950–1999	(869–062–00022–7)	46.00	Jan. 1, 2007
2000–End	(869–062–00023–5)	50.00	Jan. 1, 2007
8	(869–062–00024–3)	63.00	Jan. 1, 2007
9 Parts:			
1–199	(869–062–00025–1)	61.00	Jan. 1, 2007
200–End	(869–064–00026–2)	61.00	Jan. 1, 2008
10 Parts:			
1–50	(869–062–00027–8)	61.00	Jan. 1, 2007
51–199	(869–062–00028–6)	58.00	Jan. 1, 2007
200–499	(869–064–00029–7)	46.00	Jan. 1, 2008
500–End	(869–064–00030–1)	65.00	Jan. 1, 2008
11	(869–064–00031–9)	44.00	Jan. 1, 2008
12 Parts:			
1–199	(869–064–00032–7)	37.00	Jan. 1, 2008
200–219	(869–064–00033–5)	40.00	Jan. 1, 2008
220–299	(869–062–00034–1)	61.00	Jan. 1, 2007
300–499	(869–064–00035–1)	47.00	Jan. 1, 2008
500–599	(869–064–00036–0)	42.00	Jan. 1, 2008
600–899	(869–064–00037–8)	59.00	Jan. 1, 2008
900–End	(869–064–00038–6)	53.00	Jan. 1, 2008
13	(869–064–00039–4)	58.00	Jan. 1, 2008
14 Parts:			
1–59	(869–062–00040–5)	63.00	Jan. 1, 2007
60–139	(869–064–00041–6)	61.00	Jan. 1, 2008
140–199	(869–064–00042–4)	33.00	Jan. 1, 2008
200–1199	(869–062–00043–0)	50.00	Jan. 1, 2007
1200–End	(869–064–00044–1)	48.00	Jan. 1, 2008
15 Parts:			
0–299	(869–064–00045–9)	43.00	Jan. 1, 2008
300–799	(869–064–00046–7)	63.00	Jan. 1, 2008
800–End	(869–064–00047–5)	45.00	Jan. 1, 2008
16 Parts:			
0–999	(869–064–00048–3)	53.00	Jan. 1, 2008
1000–End	(869–064–00049–1)	63.00	Jan. 1, 2008
17 Parts:			
1–199	(869–062–00051–1)	50.00	Apr. 1, 2007
200–239	(869–062–00052–9)	60.00	Apr. 1, 2007
240–End	(869–062–00053–7)	62.00	Apr. 1, 2007
18 Parts:			
1–399	(869–062–00054–5)	62.00	Apr. 1, 2007
400–End	(869–062–00055–3)	26.00	Apr. 1, 2007
19 Parts:			
1–140	(869–062–00056–1)	61.00	Apr. 1, 2007
141–199	(869–062–00057–0)	58.00	Apr. 1, 2007
200–End	(869–062–00058–8)	31.00	Apr. 1, 2007
20 Parts:			
1–399	(869–062–00059–6)	50.00	Apr. 1, 2007
400–499	(869–062–00060–0)	64.00	Apr. 1, 2007
500–End	(869–062–00061–8)	63.00	Apr. 1, 2007
21 Parts:			
1–99	(869–062–00062–6)	40.00	Apr. 1, 2007
100–169	(869–062–00063–4)	49.00	Apr. 1, 2007
170–199	(869–062–00064–2)	50.00	Apr. 1, 2007
200–299	(869–062–00065–1)	17.00	Apr. 1, 2007
300–499	(869–062–00066–9)	30.00	Apr. 1, 2007
500–599	(869–062–00067–7)	47.00	Apr. 1, 2007
600–799	(869–062–00068–5)	17.00	Apr. 1, 2007
800–1299	(869–062–00069–3)	60.00	Apr. 1, 2007
1300–End	(869–062–00070–7)	25.00	Apr. 1, 2007
22 Parts:			
1–299	(869–062–00071–5)	63.00	Apr. 1, 2007
300–End	(869–062–00072–3)	45.00	Apr. 1, 2007
23	(869–062–00073–7)	45.00	Apr. 1, 2007
24 Parts:			
0–199	(869–062–00074–0)	60.00	Apr. 1, 2007
200–499	(869–062–00075–8)	50.00	Apr. 1, 2007
500–699	(869–062–00076–6)	30.00	Apr. 1, 2007
700–1699	(869–062–00077–4)	61.00	Apr. 1, 2007
1700–End	(869–062–00078–2)	30.00	Apr. 1, 2007
25	(869–062–00079–1)	64.00	Apr. 1, 2007
26 Parts:			
§§ 1.0–1–1.60	(869–062–00080–4)	49.00	Apr. 1, 2007
§§ 1.61–1.169	(869–062–00081–2)	63.00	Apr. 1, 2007
§§ 1.170–1.300	(869–062–00082–1)	60.00	Apr. 1, 2007
§§ 1.301–1.400	(869–062–00083–9)	47.00	Apr. 1, 2007
§§ 1.401–1.440	(869–062–00084–7)	56.00	Apr. 1, 2007
§§ 1.441–1.500	(869–062–00085–5)	58.00	Apr. 1, 2007
§§ 1.501–1.640	(869–062–00086–3)	49.00	Apr. 1, 2007
§§ 1.641–1.850	(869–062–00087–1)	61.00	Apr. 1, 2007
§§ 1.851–1.907	(869–062–00088–0)	61.00	Apr. 1, 2007
§§ 1.908–1.1000	(869–062–00089–8)	60.00	Apr. 1, 2007
§§ 1.1001–1.1400	(869–062–00090–1)	61.00	Apr. 1, 2007
§§ 1.1401–1.1550	(869–062–00091–0)	58.00	Apr. 1, 2007
§§ 1.1551–End	(869–062–00092–8)	50.00	Apr. 1, 2007
2–29	(869–062–00093–6)	60.00	Apr. 1, 2007
30–39	(869–062–00094–4)	41.00	Apr. 1, 2007
40–49	(869–062–00095–2)	28.00	[6] Apr. 1, 2007
50–299	(869–062–00096–1)	42.00	Apr. 1, 2007

Title	Stock Number	Price	Revision Date
300–499	(869–062–00097–9)	61.00	Apr. 1, 2007
500–599	(869–062–00098–7)	12.00	[5] Apr. 1, 2007
600–End	(869–062–00099–5)	17.00	Apr. 1, 2007
27 Parts:			
1–39	(869–062–00100–2)	64.00	Apr. 1, 2007
40–399	(869–062–00101–1)	64.00	Apr. 1, 2007
400–End	(869–062–00102–9)	18.00	Apr. 1, 2007
28 Parts:			
0–42	(869–062–00103–7)	61.00	July 1, 2007
43–End	(869–062–00104–5)	60.00	July 1, 2007
29 Parts:			
0–99	(869–062–00105–3)	50.00	[7] July 1, 2007
100–499	(869–062–00106–1)	23.00	July 1, 2007
500–899	(869–062–00107–0)	61.00	[7] July 1, 2007
900–1899	(869–062–00108–8)	36.00	July 1, 2007
1900–1910 (§§ 1900 to 1910.999)	(869–062–00109–6)	61.00	July 1, 2007
1910 (§§ 1910.1000 to end)	(869–062–00110–0)	46.00	July 1, 2007
1911–1925	(869–062–00111–8)	30.00	July 1, 2007
1926	(869–062–00112–6)	50.00	July 1, 2007
1927–End	(869–062–00113–4)	62.00	July 1, 2007
30 Parts:			
1–199	(869–062–00114–2)	57.00	July 1, 2007
200–699	(869–062–00115–1)	50.00	July 1, 2007
700–End	(869–062–00116–9)	58.00	July 1, 2007
31 Parts:			
0–199	(869–062–00117–7)	41.00	July 1, 2007
200–499	(869–062–00118–5)	46.00	July 1, 2007
500–End	(869–062–00119–3)	62.00	July 1, 2007
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–062–00120–7)	61.00	July 1, 2007
191–399	(869–062–00121–5)	63.00	July 1, 2007
400–629	(869–062–00122–3)	61.00	July 1, 2007
630–699	(869–062–00123–1)	37.00	July 1, 2007
700–799	(869–062–00124–0)	46.00	July 1, 2007
800–End	(869–062–00125–8)	47.00	July 1, 2007
33 Parts:			
1–124	(869–062–00126–6)	57.00	July 1, 2007
125–199	(869–062–00127–4)	61.00	July 1, 2007
200–End	(869–062–00128–2)	57.00	July 1, 2007
34 Parts:			
1–299	(869–062–00129–1)	50.00	July 1, 2007
300–399	(869–062–00130–4)	40.00	July 1, 2007
400–End & 35	(869–062–00131–2)	61.00	July 1, 2007
36 Parts:			
1–199	(869–062–00132–1)	37.00	July 1, 2007
200–299	(869–062–00133–9)	37.00	July 1, 2007
300–End	(869–062–00134–7)	61.00	July 1, 2007
37	(869–062–00135–5)	58.00	July 1, 2007
38 Parts:			
0–17	(869–062–00136–3)	60.00	July 1, 2007
18–End	(869–062–00137–1)	62.00	July 1, 2007
39	(869–062–00138–0)	42.00	July 1, 2007
40 Parts:			
1–49	(869–062–00139–8)	60.00	July 1, 2007
50–51	(869–062–00140–1)	45.00	July 1, 2007
52 (52.01–52.1018)	(869–062–00141–0)	60.00	July 1, 2007
52 (52.1019–End)	(869–062–00142–8)	64.00	July 1, 2007
53–59	(869–062–00143–6)	31.00	July 1, 2007
60 (60.1–End)	(869–062–00144–4)	58.00	July 1, 2007
60 (Apps)	(869–062–00145–2)	57.00	July 1, 2007
61–62	(869–062–00146–1)	45.00	July 1, 2007
63 (63.1–63.599)	(869–062–00147–9)	58.00	July 1, 2007
63 (63.600–63.1199)	(869–062–00148–7)	50.00	July 1, 2007
63 (63.1200–63.1439)	(869–062–00149–5)	50.00	July 1, 2007
63 (63.1440–63.6175)	(869–062–00150–9)	32.00	July 1, 2007
63 (63.6580–63.8830)	(869–062–00151–7)	32.00	July 1, 2007
63 (63.8980–End)	(869–062–00152–5)	35.00	July 1, 2007
64–71	(869–062–00153–3)	29.00	July 1, 2007
72–80	(869–062–00154–1)	62.00	July 1, 2007
81–84	(869–062–00155–0)	50.00	July 1, 2007
85–86 (85–86.599–99)	(869–062–00156–8)	61.00	July 1, 2007
86 (86.600–1–End)	(869–062–00157–6)	61.00	July 1, 2007
87–99	(869–062–00158–4)	60.00	July 1, 2007
100–135	(869–062–00159–2)	45.00	July 1, 2007
136–149	(869–062–00160–6)	61.00	July 1, 2007
150–189	(869–062–00161–4)	50.00	July 1, 2007
190–259	(869–062–00162–2)	39.00	[7] July 1, 2007
260–265	(869–062–00163–1)	50.00	July 1, 2007
266–299	(869–062–00164–9)	50.00	July 1, 2007
300–399	(869–062–00165–7)	42.00	July 1, 2007
400–424	(869–062–00166–5)	56.00	[7] July 1, 2007
425–699	(869–062–00167–3)	61.00	July 1, 2007
700–789	(869–062–00168–1)	61.00	July 1, 2007
790–End	(869–062–00169–0)	61.00	July 1, 2007
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–062–00170–3)	24.00	July 1, 2007
101	(869–062–00171–1)	21.00	July 1, 2007
102–200	(869–062–00172–0)	56.00	July 1, 2007
201–End	(869–062–00173–8)	24.00	July 1, 2007
42 Parts:			
1–399	(869–062–00174–6)	61.00	Oct. 1, 2007
400–413	(869–062–00175–4)	32.00	Oct. 1, 2007
414–429	(869–062–00176–2)	32.00	Oct. 1, 2007
430–End	(869–062–00177–1)	64.00	Oct. 1, 2007
43 Parts:			
1–999	(869–062–00178–9)	56.00	Oct. 1, 2007
1000–end	(869–062–00179–7)	62.00	Oct. 1, 2007
44	(869–062–00180–1)	50.00	Oct. 1, 2007
45 Parts:			
1–199	(869–062–00181–9)	60.00	Oct. 1, 2007
200–499	(869–060–00182–7)	34.00	[9] Oct. 1, 2007
500–1199	(869–062–00183–5)	56.00	Oct. 1, 2007
1200–End	(869–062–00184–3)	61.00	Oct. 1, 2007
46 Parts:			
1–40	(869–062–00185–1)	46.00	Oct. 1, 2007
41–69	(869–062–00186–0)	39.00	Oct. 1, 2007
70–89	(869–062–00187–8)	14.00	Oct. 1, 2007
90–139	(869–062–00188–6)	44.00	Oct. 1, 2007
140–155	(869–062–00189–4)	25.00	Oct. 1, 2007
156–165	(869–062–00190–8)	34.00	Oct. 1, 2007
166–199	(869–062–00191–6)	46.00	Oct. 1, 2007
200–499	(869–062–00192–4)	40.00	Oct. 1, 2007
500–End	(869–062–00193–2)	25.00	Oct. 1, 2007
47 Parts:			
0–19	(869–062–00194–1)	61.00	Oct. 1, 2007
20–39	(869–062–00195–9)	46.00	Oct. 1, 2007
40–69	(869–062–00196–7)	40.00	Oct. 1, 2007
70–79	(869–062–00197–5)	61.00	Oct. 1, 2007
80–End	(869–062–00198–3)	61.00	Oct. 1, 2007
48 Chapters:			
1 (Parts 1–51)	(869–062–00199–1)	63.00	Oct. 1, 2007
1 (Parts 52–99)	(869–062–00200–9)	49.00	Oct. 1, 2007
2 (Parts 201–299)	(869–062–00201–7)	50.00	Oct. 1, 2007
3–6	(869–062–00202–5)	34.00	Oct. 1, 2007

Title	Stock Number	Price	Revision Date
7–14	(869–062–00203–3)	56.00	Oct. 1, 2007
15–28	(869–062–00204–1)	47.00	Oct. 1, 2007
29–End	(869–062–00205–0)	47.00	Oct. 1, 2007
49 Parts:			
1–99	(869–062–00206–8)	60.00	Oct. 1, 2007
100–185	(869–062–00207–6)	63.00	Oct. 1, 2007
186–199	(869–062–00208–4)	23.00	Oct. 1, 2007
200–299	(869–062–00208–1)	32.00	Oct. 1, 2007
300–399	(869–062–00210–6)	32.00	Oct. 1, 2007
400–599	(869–062–00210–3)	64.00	Oct. 1, 2007
600–999	(869–062–00212–2)	19.00	Oct. 1, 2007
1000–1199	(869–062–00213–1)	28.00	Oct. 1, 2007
1200–End	(869–062–00214–9)	34.00	Oct. 1, 2007
50 Parts:			
1–16	(869–062–00215–7)	11.00	Oct. 1, 2007
17.1–17.95(b)	(869–062–00216–5)	32.00	Oct. 1, 2007
17.95(c)–end	(869–062–00217–3)	32.00	Oct. 1, 2007
17.96–17.99(h)	(869–062–00218–1)	61.00	Oct. 1, 2007
17.99(i)–end and 17.100–end	(869–062–00219–0)	47.00	[8] Oct. 1, 2007
18–199	(869–062–00226–3)	50.00	Oct. 1, 2007
200–599	(869–062–00221–1)	45.00	Oct. 1, 2007
600–659	(869–062–00222–0)	31.00	Oct. 1, 2007
660–End	(869–062–00223–8)	31.00	Oct. 1, 2007
CFR Index and Findings Aids	(869–062–00050–2)	62.00	Jan. 1, 2007
Complete 2007 CFR set		1,499.00	2008
Microfiche CFR Edition:			
Subscription (mailed as issued)		406.00	2008
Individual copies		4.00	2008
Complete set (one-time mailing)		332.00	2007
Complete set (one-time mailing)		332.00	2006

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2005, through January 1, 2006. The CFR volume issued as of January 1, 2005 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2007. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 2006 through April 1, 2007. The CFR volume issued as of April 1, 2006 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2006, through July 1, 2007. The CFR volume issued as of July 1, 2006 should be retained.

[8] No amendments to this volume were promulgated during the period October 1, 2005, through October 1, 2007. The CFR volume issued as of October 1, 2005 should be retained.

[9] No amendments to this volume were promulgated during the period October 1, 2006, through October 1, 2007. The CFR volume issued as of October 1, 2006 should be retained.